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M A R I T I M E L A W S  
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## ADVERTISEMENT.

ANY research which tends to gratify a learned curiosity is at least innocent and amusing. If it serves at the same time to explain the manners and customs of a remote age, or to illustrate any trait of national character, it may justly be deemed both interesting and profitable. Few branches of literature can attain this important end so successfully as that which has for its subject the laws and polity of States ; and there is none perhaps which has reflected stronger light upon public and domestic History, or proved a finer comment upon ancient Philosophy and Polite Letters, than the liberal study of JURIDICAL ANTIQUITIES. How far the truth of this observation may

appear in the following pages I will not presume to say. They were originally designed to form a part of the ILLUSTRATIONS annexed to the CHRONOLOGICAL VIEW, but finding the materials more copious than were at first imagined, I determined to lay them before the Public in a separate Treatise. By their judgment it must be determined how far an enquiry into the MARITIME LAWS OF RHODES may contribute to the amusement of the Classsical Reader, or to the utility of the Student of CIVIL LAW.

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**T**H E BARON DE MONTESQUIEU has observed, that the laws of a well-regulated maritime state must necessarily be more varied and comprehensive than those of any other.<sup>a</sup> The reason is obvious. It is in such a state that the commercial spirit is usually found to be most active. This activity produces an extensive communication, which drawing together into one city the inhabitants of different countries, gives rise to a multitude of customs, interests and engagements, unknown to an inland people. “*Diffimilitudo civitatum, says TULLY, varietatem Juris habeat necesse est.*”<sup>b</sup> So that in order to adjust

<sup>a</sup> Esprit des Loix. Liv. 20. cap. 16.    <sup>b</sup> Pro Balbo. §. 13.



the controversies incident to this intercourse of nations, a peculiar jurisdiction is requisite, and certain principles of general jurisprudence must be adopted to conduct litigations and decide cases which do not fall within the reach of municipal polity. To such an establishment XENOPHON alludes, when, pointing out the means of encreasing the public revenue, he exhorts his countrymen to erect a kind of MARITIME TRIBUNAL, and to bestow rewards upon such of the judges as should distinguish themselves by a diligent discharge of their function.<sup>c</sup>

That a people who so happily applied the principles of sound philosophy and natural justice to the various exigencies of civil life, and who constructed a juridical system more durable and extensive than their empire,<sup>d</sup>

<sup>c</sup> Ποσει. p. 728. edit. Leunclav. The *Naval Duumvirs* had no judicial authority at Rome; but in the lower empire there seems to have been an officer like our *Consul*. Cod. Theodos. L. 7. De Naviculariis.

<sup>d</sup> “Tanta sapientia fuisse Roma in *Jure constituendo* putanda est, quanta fuit in his tantis opibus *Imperii* comparandis.” *De Orat.* I. §. 44.

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should never have struck out any thing original in this essential branch of legislation may appear somewhat singular. The Romans did not even take the pains to digest or arrange the materials which they borrowed; and while they carried every other part of jurisprudence to the highest pitch of accuracy and refinement, were content to stand indebted to one of their provinces both for the form and matter of their Maritime Code.

It is the purport of the following Treatise to attempt an elucidation of this point, by shewing that the conduct of the Romans was perfectly consistent with their National Character and Form of Government; and that the peculiar excellence of the RHODIAN LAWS amply justified their adoption.

It seems to be generally agreed that the Romans were never very conspicuous as a *Maritime Power*, either in a military or a commercial light. Many years had elapsed from the foundation of their city before they be-



came possessed of any thing that resembled a marine establishment, and though toward the latter age of the republic we read of some very surprizing naval exertions, the Sea certainly was not their favourite element.\* POLYBIUS informs us that before the first Punic War, they had never been engaged in an action at sea, and being ignorant of the art of Ship-building, had till that time been accustomed to navigate in hired vessels. The same writer indeed has given us some ancient treaties between Rome and Carthage, the first of which carries us back to the year of the city 245, and contains, among other curious particulars, certain restrictions on Roman fleets visiting the coasts of Africa, and on their trade both there and in the Island of Sardinia; but it must be observed, that though this appears at first sight to contradict what has been asserted of their ignorance in naval matters,

\* It is worthy remark that there is no trace of any maritime Law in the XII Tables, though at the time of the embassy into Greece, those of RHODES may be supposed to have had very extensive influence.

MONTESQUIEU's reason for this is perhaps too refined, see *Esprit des Loix*, Liv. 21. c. 9.

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it will be found perfectly consistent, if we recollect the vicinity of these countries to the coast of Italy.<sup>f</sup> The constant wars in which Rome was involved with her neighbours, during the first five centuries, may be a reason why she paid so little attention to naval affairs. We find the smaller States of Italy very early on the sea, and engaged in considerable commerce for those times ; particularly the Tarentines, Tyrrhenians, Spinetes and Liburnians, the latter of whom gave name to the most commodious kind of vessels used by the Romans. The city of Spina also, according to DIONYSIUS, became very powerful; and some idea may be formed of its opulence from the many rich presents brought by this State to the temple at Delphi.

The encreasing power and haughtiness of Carthage at last exciting the jealousy of

<sup>f</sup> POLYBII. *Hist.* Lib. 3. cap. 22. et seq. He tells us these *Treaties* were copied by him with great difficulty from some obscure originals on brazen tablets in the Capitol. BARBEYRAC, in his *Supplement* to the *Corps Diplomatique*, has given some acute remarks on them. Tom. I. Art. xcvi. ccli. ccxcvii. cccxxxii. and they have been ably illustrated by PROFESSOR HEYNE in some *Gottingen Dissertations*, Anno 1780.

Rome,

Rome, taught her the necessity of supporting a marine force, and the famous victory of DUILLIUS, the first fruits of her application to naval business, encouraged her to persevere in it.<sup>g</sup> By an unexampled instance of exertion she in a few months constructed a navy which enabled her to maintain a superiority at sea, as is evident from her success soon afterwards against the Macedonians, and from the event of the third Punic War, which ended in the total destruction of her rival.<sup>h</sup>

After this she sent out a very respectable fleet against the Piratical Confederacy, which had received considerable strength

<sup>g</sup> The singular privilege which DUILLIUS enjoyed in consequence of this victory, of being preceded at night by torches and music, gave great offence to many of the graver Romans. CICERO mentions his having often met him, when a boy, with this pompous attendance, and exclaims *tantum licentiæ dabat gloria!* De Senectute: and FLORUS observes upon it, that it seemed to him, like “a diurnal repetition of a Triumph, which other conquerors were modest enough to confine to a single day.” Lib. 2. cap. 2. §. 10.

<sup>h</sup> It was soon after the destruction of Carthage that Rome established a *trade* between *Utica* on the African coast and the island of *Delos*, from whence she annually imported *slaves* into the city.

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by a junction with the ruined inhabitants of Carthage and Corinth. They infested every part of the Mediterranean, and hovering about the mouth of the Tiber, effectually cut off the communication between Rome, and Sicily, the principal granary of the City. It was upon this occasion that POMPEY was invested with the sole command of the whole Roman Navy, ( a species of authority never before entrusted to an individual ) and with a Fleet of more than five hundred sail held absolute sway over the sea and the coasts, from the pillars of Hercules to the Thracian Bosphorus. He totally broke the piratical league, and, in order to prevent its reunion on the seas, settled its members in a large track of country at a great distance from the coast,<sup>i</sup>

The dominion of the sea became much more confirmed and extended under the Emperors, some few of whom were naturally inclined to favour it. In the CODE OF THEODOSIUS is a law of CONSTANTINE and JU-

<sup>i</sup> FLORUS. Lib. 3. cap. 6.



LIAN which confers the rank of KNIGHT upon those who had borne a naval command with honour; and another of VALENTINIAN, which encourages persons of distinction to serve their country in that station. DIONYSIUS OF HALICARNASSUS terms Rome the mistress of the sea, not of the Mediterranean only, but of whatever parts were navigable, and says that she maintained considerable fleets.<sup>k</sup> The extent of her power 150 years after this, is specified by APPIAN, who mentions the islands of the Mediterranean and Egean seas; the Cyclades, Sporades, Cyprus, Crete, Rhodes and Lesbos, as subject to her; and in the days of ARCADIVS and HONORIUS we find she had large fleets constantly stationed at Alexandria, Carthage, Seleucia, and in the Euxine, besides others of smaller note in the ports of Italy and the islands.<sup>l</sup>

It is extraordinary that with all this authority in their hands, the Romans should have

<sup>k</sup> Lib. 1.

<sup>l</sup> COD. Lib. 12. tit. 60. COD. THEODOS. Lib. 8. tit. 7. §. 14. COD. Lib. 12. tit. 24. §. 2.

been ignorant of the true advantages to be derived from naval power. In all their equipments, the principal object was to extend their Empire, or to keep in awe the refractory provinces. Their fleets were seldom employed to open new communications, to discover new people, or to protect and encourage commercial intercourse with distant climates. Except when they attended the corn ships from Sicily and Alexandria, or convoyed home the spoils of some conquered country, we never hear of their being upon the seas but for military purposes.<sup>m</sup> This (says a writer who cannot be too often quoted) was perfectly suitable with the national genius of “a people of soldiers, whose *trade* was their *sword*, and whose sword supplied all the advantages of trade, who

<sup>m</sup> This appears from the evidence of medals and inscriptions, where the emblems and titles are uniformly of a military cast. See MORISOTI *Orbis Maritimus*. Lib. 1. cap. 26.

The Corn Traders were very early incorporated, and enjoyed privileges at Rome. DIG. lib. 3. tit. 4. et COD. THEODOS. tit. *De Naviculariis*. There were also officers appointed to superintend the distribution of this Commodity, called *Præfecti Annonæ*, nearly upon the same plan as the french *Commissaires Des Vivres*. DIG. lib. 48. tit. 12. *De Lege Juliâ, De Annonâ*.

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brought the treasures of the world into their own exchequer, without exporting any thing but their personal bravery; who raised the public revenues, not by the culture of Italy, but by the tributes of Provinces; who had Rome for their mansion and the world for their farm. In consequence of this martial spirit, adds he, they lived on terms of defiance with all mankind. This proved fatal to factories and correspondence. The world was in arms, and Insurances and Under-writing were but a dead letter.<sup>n</sup> In a State where the military spirit thus pervaded every rank and condition of life, it was not probable that many should have either leisure or inclination for the pursuit of gain. *Quisque Hostem ferire, Murum ascendere, conspici dum tale facinus faceret properabat; eas divitias, eam bonam famam, magnamque nobilitatem putabant* was the sketch which SALLUST drew of the infant features of the Republic, and the likeness was tolerably preserved even at the time he wrote,<sup>o</sup> except

<sup>n</sup> TAYLOR'S *Elements of Civil Law*. Art. *Property*. p. 501. 504.

<sup>o</sup> *Bell. Catilin.* Every Roman was by birth a soldier, nor did he think it honourable to quit his profession, or exchange it



that the contentions of the *forum* then engrossed almost as much of their attention as those of the *field*.

But the interests of commerce were not only neglected by the Romans: it appears from some of their best writers and from various regulations in the law books, that mercantile pursuits met with peculiar discouragement, and that Trade, of whatever denomination, was expressly forbidden to men of noble or illustrious families; because, says LIVY, "*Quæstus omnis indecorus Patribus visus est*," tho' in a law of HONORIUS, which forbids all men of family and fortune, or such as had borne any public offices, to engage in trade, a different reason is assigned, "*Ut inter Plebeios et Negotiatores facilius sit emendi, vendendique commercium*";<sup>p</sup> from the idea that a bargain is likely to be more just when the buyer and

it for another, as long as he had vigour to pursue it. COD. 4. 65. 31. "*Canitiem Galeâ premimus*" says, the poet. Though strictly speaking the time of necessary service (the *ætas Robusta* or *militaris* as it is called) terminated with the XLVth year. D. 48. 5. 15.

<sup>p</sup> LIV. XXI. §. 63.

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seller are on a level. The same honest principle, no doubt, which led the Greek Emperor to condemn to the flames a vessel richly laden which had been freighted by his wife.<sup>a</sup>

As a further restriction, the merchant and mechanic were prevented by law from holding any dignity or exercising any office in the state; were forbidden to wear a sword, except on journeys, under certain restrictions; and by a still severer and more material exception, were, in the article of Marriage, deprived of the hopes of advancing their families to public honours or employments.<sup>r</sup> In short, what CICERO says of trade (which some have, I think with little reason, construed into a compliment) may be considered as the general

<sup>a</sup> ZONARAS, lib. 3. MONTESQUIEU has given an example of the truth of this maxim in the conduct of the Portuguese and Castilians on their East India settlements. *Esprit des Loix*. Liv. 20. cap. 18. Q. CLAUDIUS, a Tribune, introduced a law, forbidding a man of senatorial rank, to possess a ship of more than 300 Amphoræ burthen; that being thought sufficient for carrying the produce of his estate. N. B. A Roman Amphora contained about nine gallons.

<sup>r</sup> See a Constitution of CONSTANTINE. Cod. Lib. 5. tit. 27. §. 1.



opinion of his countrymen. “*Mercatura si tenuis, sordida putanda est; si magna et copiosa, multa undique apportans, multisque sine vanitate impartiens, non est admodum vituperanda.*” It cannot be supposed that em-

<sup>s</sup> *De Officiis*. Lib. 1. These sentiments, which operated so strongly against Trade, are not the only instances of great resemblance between the Institutions of ROME and LACEDÆMON, where, says XENOPHON, traffic was confined to slaves or people of the lowest class. Q. Was it by accident or design that MERCURY was at Rome regarded as the god of *Thieves* as well as of *Merchants*?

I cannot forbear introducing in this place some sentiments upon this subject, which notwithstanding the high character of the person from whom they proceed, will not I believe be readily subscribed to in this country.

Mr. BOSWELL asks Dr. JOHNSON, “What is the reason that we are angry at a *Trader's* having opulence?” *Johnson*. “Why, Sir, the reason is, (though I don't undertake to prove that there is a reason) we see no qualities in trade that should entitle a man to superiority. We are not angry at a soldier's getting riches, because we see that he possesses qualities which we have not. If a man returns from a battle, having lost one hand, and the other full of gold, we feel that he deserves the gold; but we cannot think that a fellow, by sitting all day at a desk is entitled to get above us,” *Boswell*. “But, sir, may we not suppose a merchant to be a man of an enlarged mind, such as ADDISON in the *Spectator* describes Sir Andrew Freeport to have been?” *Johnson*. “Why, sir, we may suppose any fictitious character. We may suppose a philosophical day labourer, who is happy in reflecting that by his labour he contributes to the fertility of the earth, and to the support of his

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ployments, so little respected or understood as *Commerce* and *Navigation* were by the Romans, would find a very conspicuous place in their political arrangements. It is true, many Edicts to this purpose occur in the Law Books, but we look there in vain for any thing like a *Mercantile* or *Maritime Code*.<sup>t</sup> Even those laws which are found dispersed in the *Corpus Juris Civilis* are thought not to be intended as general regulations, but to refer merely to the corn trade, which, being of the utmost consequence to a people whose territory was not adequate to the furnishing of a sufficient quantity for their own consumption, naturally forced the attention of the Legislature to this branch of commerce.<sup>u</sup>

fellow creatures ; but we find no such philosophical day-labourer. A merchant may, perhaps, be a man of an enlarged mind ; but there is nothing in trade connected with an enlarged mind." BOSWELL'S *Journal of a Tour to the Hebrides*. p. 409. This opinion, which would have been applauded at Rome and Sparta, never can be admitted at London, Ham-  
burgh, or Marseilles.

<sup>t</sup> DIG. Lib. 14. tit. 1, 2. Lib. 47. tit. 9. Lib. 48. tit. 12. COD. JUSTIN. Lib. 4. tit. 33 et 63. Lib. 11. Tit. 1. COD. THEODOS. *De Naviculariis*.

<sup>u</sup> See SÜETONIUS *Vit. Claud.* cap. 19. Before the conquest of EGYPT, SICILY and SARDINIA were the granaries of Rome.

I thought it necessary to premise thus much on a very copious and curious subject, not altogether unconnected with our present purpose, and shall now proceed to consider more at large the source from which the Romans derived their Marine Laws.

This honour is due to the Island of RHODES, the extraordinary wisdom and justice of whose Naval Code, gained it admission into the most celebrated System of Polity that ever was devised; whence, being partially adopted in the Eastern Empire, it has imper-

Rome. After that event, the principal Corn Trade was carried on at ALEXANDRIA, and AUGUSTUS established a regular fleet for that purpose, which was called *Sacra*, or *Felix Embolæ*; the *Sacred*, or *Happy Freight*. The ceremonies observed on its arrival at the mouth of the Tiber, are related with such circumstances as give us the highest ideas of its importance. SENECA. Epist. 78. SÜETONIUS, in *Vit. Augusti*. §. 88.

This had been the case from the earliest age of the republic, for in the second year after the expulsion of the kings, when PORSENNA struck terror into Rome, by his approach to reinstate the Tarquins, LIVY says, "Multa igitur blandimenta Plebi ab Senatu data; *Annonæ* in primis habita cura, et ad *frumentum comparandum* missi, alii in Volscos, alii Cumas." Lib. 2. cap. 9. SÜETONIUS speaking of some very pressing occasions to justify the use of slaves in the army reckons, *a tumultu in a time when supplies of corn are scanty*. *Vit. Aug.* §. 25.



fectly descended to these times, and may be traced in most of the Naval Codes now in use.

Though Cicero's observation, "*Qui Mare tenet, eum necesse est Rerum potiri*,"<sup>v</sup> appear not to have been much understood at Rome, in his days, it was nevertheless founded on Reason and Fact, and has been since justified by many striking examples. History, I believe, scarcely offers an instance of an industrious maritime people, however inconsiderable in point of territory, who have failed to arrive at great political consequence.<sup>w</sup>

I might confirm this remark by the examples of some ancient and modern states, which must occur to my reader's recollection, but shall confine myself to that single one which is immediately connected with our subject.

<sup>v</sup> *Ad Atticum*. Lib. 10. Ep. 1.

<sup>w</sup> What CENSORINUS, in Appian, says to the Carthaginian deputies, cannot be taken as a serious argument. It was the interest of the Romans to persuade them that a *maritime situation* was disadvantageous, and the earnestness with which he addresses them proves what was his real opinion of the matter. APPIAN. Lib. 8. *De rebus Punicis*, §. 86. edit. SCHWEIGHÆUSER. 1785.

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There is no writer extant who treats expressly of the RHODIANS; what we would know of them therefore must be collected by fragments from various sources; fortunately their extensive connections, and their activity for so many years in the affairs of Greece and Rome, has given them such a respectable place in history, that the materials are not so scanty or unconnected as might be conceived.

The ISLE OF RHODES, lies in the Mediterranean Sea, about seven leagues from the coast of Lycia and Caria, and is described as part of Asia Minor. Its original inhabitants, according to the best accounts, were Cretans of the race of Hercules; for, though they are frequently called descendants of the Dorians, and were themselves fond of being so considered, it is well known, that colony did not settle in the island till after the Trojan war.\* At this early period they

\* STRABO Geograph. Lib. 14. PAUSANIANS. Lib. 9. DIODORUS SICULUS. Lib. 5. cap. 13. ARISTIDES. *Ροδίοις, Περὶ οἰκονομίας*. p. 568. edit. JEBB. Oxon. 1722. At the conclusion



appear to have been a powerful and industrious people. HOMER, in his celebrated catalogue of the confederated fleet dwells with peculiar satisfaction on the "nine vessels which were brought by TLEPOLEMUS from this island;" and from what he says at the conclusion of his little history of its original settlement, it may be supposed then to have been in a flourishing condition.<sup>y</sup> PINDAR has also spoken in very high terms of Rhodes, and figuratively describes its wealth and fertility by saying that "the sun collected together clouds which poured down showers of gold upon it,"<sup>z</sup> the same image that is used

of this oration, ARISTIDES, urging them strongly to unanimity, says, "I am particularly pained that you, who are so tenacious of your original language, as not to admit a single expression, but what is *Doric*, in a matter of so much moment as the welfare of your state, which depends on your unanimity, should be so little solicitous of preserving the *Doric Harmony*." Loc. cit. p. 571.

<sup>y</sup> Iliad. B. 653.

<sup>z</sup> Olymp. Od. 7. ll. B. 670. The HALIA, a celebrated festival at RHODES, was not derived, as many have imagined, from αλς, the sea, but from the Doric αλιος, for ηλιος, the sun, to whom the island was dedicated: and it must be observed as something singular, that the Rhodians, though for so many ages a maritime people, never offered any sacrifice or celebrated any rites to the sea.

by Homer on the like occasion. STRABO informs us, that in times of remote antiquity, by reason of its superiority on the seas, the wisdom of its laws and the industry of its inhabitants, no country in the world exceeded Rhodes, and adds that it was this maritime excellence alone which afterwards supported its influence for so long a time among the ancient states, and strengthened its alliances with the Greeks and Romans.<sup>a</sup>

The fame which this island acquired, by its numerous seminaries of learning, is known to every classical reader. Thither ÆSCHINES retired, and opened that school of Rhetoric to which, after his death, the greatest characters in Rome resorted.<sup>b</sup> Cicero and Pompey both studied there, and Julius Cæsar, we are told, having put to sea for that purpose,

Pindar calls Rhodes *τριπολιν νησον*, from the three cities, Jalyssus, Lindus and Camirus, which it originally contained; for the city, that bears the name of the island, was first built during the Peloponnesian war, by the same architect, according to STRABO, who constructed the Piræus at Athens. *Geog. Lib. 14. p. 964. edit Amstelod. 1717.*

<sup>a</sup> Loc. cit.

<sup>b</sup> See his Epistle to Philocrates, in which he describes his voyage; And PLUTARCH, *In vit. Demosthen.*



was taken on his voyage by Pirates.<sup>c</sup> But it was not alone the cultivation of Eloquence, Philosophy, and the Greek Language which attracted such a number of visitants; the pure temperature of the climate, the fertility of the soil, and the luxurious refinements of the capital City, which once might be said to have rivalled Athens herself, conspired to render Rhodes a desirable retreat.<sup>d</sup> To this happy condition of the island a variety of writers have given testimony; but in a more particular manner the Sophist ARISTIDES, in his

<sup>c</sup> He was forced to remain in captivity, says SÜETONIUS, forty days, “non sine summâ indignatione, cum uno Medico et cubiculariis duobus.” Lib. 1. §. 4.

<sup>d</sup> STRABO. Lib. 14. ATHENÆI Deipnosoph. §. 13. In CICERO’s familiar epistles, Brutus says to Cassius “Quid ergo est, inquis, tui consilii? Dandus est locus fortunæ; cedendum ex Italiâ, migrandum RHODUM.” Lib. 11. Ep. 1. And in another of Matius to Cicero, “Mihi quidem si optata contingent, quod reliquum est vitæ in otio RHODI degam.” Lib. 1. Ep. 28. The emperor TIBERIUS passed seven years of his life there, upon which occasion MANILIUS has the following complimentary lines.

“Virgine sub castâ felix terrâque marique  
Est RHODOS, hospitium recturi principis orbem:  
Tumque Domus vere solis, cui tota sacrata est  
Cum caperet lumen magni sub Cæsare mundi.”

Lib. 4. 763. edit. Bent. 1739.

two Orations to the inhabitants. To him I refer my readers,<sup>e</sup> and hasten to what is more properly our concern, its *maritime* consequence and power.

Here we shall meet with numerous confirmations of CICERO's remark.<sup>f</sup> In what light the Rhodians were considered by the Athenians, who, of all the Grecian States, stood the highest in naval power, may be collected from a variety of facts in the history of that people, but more particularly from a spirited Oration of Demosthenes, wherein he labours to persuade his countrymen that it is both for their honour and their interest to deliver those islanders from the oppressive Oligarchy under which they groaned; and although at that time they had very little reason to expect any favour from the Athenians, justly dissatisfied with their conduct in the Social War, yet of such consequence did this Orator consider their alliance, that

<sup>e</sup> Loc. cit.

<sup>f</sup> See p. 20.



perhaps there is not extant a more laboured piece of eloquence than that which he delivered upon this occasion.<sup>g</sup> It did not fail to have it's proper effect, and the Rhodians became once more a free people.<sup>h</sup> From this time the situation of their affairs was very flourishing, and their alliance was courted successively by almost all the contending Princes; yet, upon the most prudent principles of policy, seldom adopted by powerful states, they persevered in observing such a strict neutrality, that we do not hear of their being actively engaged in any dispute for more than 40 years.<sup>i</sup> Thus they naturally

<sup>g</sup> Περὶ τῆς τῶν Ῥωδίων ἐλευθερίας. See also ISOCRATES, *For the Peace*.

<sup>h</sup> Ant. Xt<sup>m</sup> 350. Some writers, it is true, give another account of this matter, asserting, that it was to the death of the famous ARTEMISIA, who had conquered their island and governed it with great rigour, and not to the eloquence of Demosthenes, that Rhodes was indebted at this time for its freedom. See AUL. GELLIUS. Lib. 10. c. 18. STRABO, Lib. 14.

<sup>i</sup> It was this policy which induced them to make a voluntary submission to ALEXANDER THE GREAT, whose arms they knew were irresistible, and under whose protection they had nothing to fear. QUINT. CURTIUS. Lib. 4. DIODORUS tells us—This Conqueror had a peculiar affection for Rhodes, and deposited his Will in the Archives of that City.

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encreased in wealth and power, while their neighbours, constantly engaged in obstinate and expensive wars, were gradually wasting their strength and revenue. They became however at last (as might reasonably be expected) an object of jealousy, and by refusing to join ANTIGONUS, who had earnestly solicited their assistance against PTOLEMY, this Prince turned his whole force upon them in that famous siege, which gave rise to more ingenious instruments of destruction than any upon the records of antiquity.<sup>k</sup> Notwithstanding the shock they received from such a formidable attack, in their subsequent wars with the Byzantines and Macedonians they still maintained their usual superiority at sea; and, near a century after, in a naval engagement off the island of Chios, gave Philip the severest overthrow he ever expe-

<sup>k</sup> Ant. Xt<sup>m</sup> 304. 303. CAMPBELL, *Political Survey*. Vol. I. p. 33. very justly observes that, their *commercial interests* naturally connected them with Ptolemy. DIODORUS SIC. Lib. 20. PLUTARCH. in vit. Demetrii. POLYÆNI *Strateg.* Lib. 4. cap. 6.

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rienced.<sup>1</sup> It was to them that the eyes of Greece were turned for protection against the oppressive requisition of the Byzantines, who attempted to impose a tax upon all ships which entered their sea; and POLYBIUS declares of them at this period, that they conducted their enterprizes with such a degree of activity and zeal, that he will not scruple to pronounce them the most powerful and opulent state of Greece.<sup>m</sup>

The very essential service they rendered the Romans, by harassing and checking the naval armaments of the Carthaginians, promoted and confirmed a long alliance between them; an alliance to which, it is probable, that Rome was indebted for all the maritime skill she afterwards possessed. LIVY has recorded a speech made by the Rhodian ambassadors to the Roman Senate, which carries with it an air of haughtiness and indepen-

<sup>1</sup> POLYBIUS. Lib. 16. The whole account of this naval action is worth consulting, for it abounds with instances of singular courage and skill, and conveys to us a very advantageous idea of the naval power of the Rhodians.

<sup>m</sup> Lib. 4. cap. 5.

dence very unusual in addressees to that powerful people.<sup>n</sup> The subject of their embassy was nothing less than to insist that the Romans should make peace with Perseus, against whom, while they thought the cause was just, they had materially assisted them; and at the same time a second embassy to the same purpose was dispatched to the army in Macedonia, threatening that they would turn their arms against the Romans if they refused to comply with their requisition. The consequences, however, proved extremely humiliating to the Rhodians; the principal partisans of Perseus were put to death, and the ambassadors were obliged to appear before the Senate habited in mourning, and to plead forgiveness for their insolence in a strain very opposite to their address in the preceding year.<sup>o</sup>

<sup>n</sup> Lib. 44.

<sup>o</sup> Ut supra. Lib. 45. GELLIUS has preserved some fragments of a speech of Cato in behalf of the Rhodian Ambassadors; among which are the following remarkable words. "Rhodienses superbos esse aiunt, id objectantes quod mihi a liberis meis minime dici velim. Sint sane superbi. Quid id ad nos attinet? idne irascimini si quis superbior est quam nos?" Lib. 7. cap. 3.



Not long after this, CICERO speaks of them as of a people, “*Quorum usque ad nostram memoriam disciplina navalis et gloria remansit,*”<sup>p</sup> though they had then very visibly begun to decline both in power and wealth, and a few years after were so far reduced that, notwithstanding they retained, according to the Historian, their naval skill, they suffered a defeat at sea from the very people whom they had taught to make use of a marine force.<sup>q</sup> Thenceforth they took a less splendid part; for though their island continued to possess all its natural and acquired advantages, a fruitful soil, commodious ports and arsenals, stately edifices and schools of learning, yet the national character was much degenerated from what it was in those days when, with a laudable spirit of patriotic jealousy, they would say as ARISTIDES afterwards encouraged them in vain to say; “We are Rhodians. Will any nation, Greek or Barbarian, contend with us on points of ho-

<sup>p</sup> Pro Lege Maniliâ.

<sup>q</sup> APPIAN. Lib. 4. De Bellis civilibus, §. 72. edit. SCHWEIGHÆUSER. 1785.

nour or nobility, we will contend with them, we will exceed them.<sup>1</sup>" MARCUS ANTONIUS was a great admirer of the Rhodians it is said, and attempted to restore them to some degree of power, but they made such an ill use of his indulgencies that he was obliged to repeal them.\* Under the first Emperors little occurs to illustrate their history.

<sup>1</sup> ÆLIUS ARISTIDES. *Ροδίοις, περί Ομονοίας*. p. 566. Tom. I. edit. Jebb. Oxon. 1722.

C. CASSIUS, 41 years before Christ, plundered the City of all its pictures and statues, leaving only that of APOLLO, upon which he observed, in derision, that he had left the Rhodians nothing but the SUN. How contrary this to the conduct of Demetrius upon a like occasion, who not only abstained from plunder, but, at the end of the siege, delivered to his enemies all the military machines which they had constructed! PLUT. *Vit. Dem.* See also, his well known behaviour to PROTOGENES. The conduct of CASSIUS is still more reprehensible, when we are told he received his education in the island. APPIAN, *ut supra*. The Historian's whole account of the General's conference with his old præceptor ARCHELAUS, who was sent to deprecate his vengeance, is highly interesting. §. 67.

\* APPIAN, *ut supra*. Lib. 5. §. 7. He bestowed upon them some islands in the Mediterranean, which they so severely oppressed with taxes, that they were withdrawn from their jurisdiction in the following year. *Loc. cit.* The prevailing vices of the Rhodians seem to have been luxurious living and a haughty spirit, the natural consequences of great wealth and a long series of prosperity. ATHEN. *Deip.* 10 & 14, 15.

That



That their condition could not have been very flourishing we may infer from an observation which TACITUS has made upon them, that the Romans granted them liberty and deprived them of it, according as they were found to deserve it by readily fulfilling their engagements as allies in war, or to forfeit it by their internal seditions.<sup>i</sup> And notwithstanding PLINY, who wrote at the beginning of VESPASIAN'S reign, calls Rhodes, "*Civitas Libera et pulcherrima,*"<sup>u</sup> we find, that under this very Emperor it became for the first time a Roman Province.<sup>w</sup> In this state it remained, under the Greek Empire, till the 7th Century, when, together with other Islands in those seas, it yielded to the arms of the Saracens. We have very short and imperfect accounts of this part of the

<sup>i</sup> TACIT. *Annal.* Lib. 12. Yet, in the reign of AUGUSTUS, the name of a citizen of Rhodes was purchased at a considerable price, an example of which ATHENÆUS has given us in POSIDONIUS the Stoic.

<sup>u</sup> Lib. 5. cap. 31.

<sup>w</sup> SÜETONIUS, *in vit. Vesp. as.* cap. 8. OROSIUS. Lib. 7. For some curious specimens of Rhodian Coins, see HUBERTI COLTZII *Græciæ universæ Numismata.* Tab. xxiii. xxiv.

Rhodian history, and few events occur worthy of being separately recorded.

It may not be improper to mention, that soon after Vespasian's death the Island was desolated and the City totally destroyed by an earthquake. This melancholy event is spoken of by PAUSANIAS,\* and by CAPITOLINUS in his life of ANTONINUS PIUS, during whose reign it happened, but in a more particular manner by ARISTIDES the Sophist, who had studied there, and retained a strong affection for the place†. His description of the calamity is extremely picturesque and affecting. He expatiates largely on the irreparable loss which all the civilized world must feel from the destruction not only of so many noble specimens of architecture, sculpture, painting, and military engines, but from being deprived of the advantage which they enjoyed of such commodious harbours and arsenals as those of RHODES. For he adds “of all these, and various other

\* Lib. 2. Cap. 7. Lib. 8. Cap. 43.

† In *Rhodiac.* p. 553, edit. Jebb, et *Περὶ Ῥοδίων*, p. 571.



splendid ornaments, which at once declared the surprising opulence and strength of the place, no vestige remains. Nothing now is visible but the bare rock on which the city stood!"<sup>z</sup>

Though the humanity of ANTONINUS PIUS induced him to attempt the restoration of Rhodes, and great sums of money were expended on the work, there is every reason to think this was but partially executed, and extended only to cleansing the harbour and rebuilding the magazines<sup>a</sup>; for from this period it is mentioned as a convenient and much frequented port: but we hear nothing of the learning, the valour, or the opulence of its inhabitants. After groan-

<sup>z</sup> Ut sup. passim. In the same Oration he recommends it to them to send emissaries to different countries for the purpose of collecting contributions for restoring the city, p. 360, and again, *Περὶ ὀφειλῶν*, p. 274. a custom not uncommon in other instances of the same kind in ancient times; and which, as POLYBIUS observes, had been practised before by the Rhodians on a similar occasion with great success. Lib. 5.

<sup>a</sup> PAUSANIAS, *Arcad.* lib, 8, dwells upon this admirable trait in Antonine's character, which had shewn itself upon many other occasions.

ing long under the Saracen yoke, it seemed to recover something of its ancient spirit in the hands of its next possessors, the famous HOSPITALERS OR KNIGHTS OF ST. JOHN OF JERUSALEM, who maintained their ground from the opening of the 14th century till the year 1521; when, after incredible efforts of bravery and skill, they were finally driven out by the victorious arms of SOLYMAN THE MAGNIFICENT. Since that time the Island has remained in the hands of the Turks.<sup>b</sup> It is not to our pre-

<sup>b</sup> Before the HOSPITALERS were dispossessed, they were known by the name of *Knights of Rhodes*. After their expulsion they wandered in search of a place of settlement for more than eight years, and being at last put in possession of *Malta* by CHARLES THE FIFTH, they adopted the name of that Island, which they still maintain, together with a very watchful jealousy over the Turks, and inhabitants of the Barbary Coast. If we may rely on the public papers, the ancient spirit of these Islanders has not yet forsaken them; for we there read of a very gallant action with a superior number of Tunisian Gallies, in which the Maltese admiral obtained a complete victory. *Morning Chron.* Dec. 9. 1785.

It is somewhat singular that the history of this people, which exhibits such a splendid detail of events, should remain so little known. Their unparalleled exertions for almost two centuries against the Infidels; the admirable traits of civil wisdom in their government; the characters and the conduct of an illustrious succession of Grand Masters, whose extensive alliances rendered them respectable at all the Courts of Europe,



sent purpose to dwell on the history of those RELIGIOUS MILITANTS, it is sufficient to observe, that although (agreeably to the spirit of their Institution) they never encouraged commercial intercourse among themselves, they have always been very strenuous defenders of the trafic carried on in their Seas by other powers; and that their expulsion from Rhodes must consequently have proved detrimental to the Levant trade, of which they constantly professed themselves the protectors. <sup>c</sup>

and formidable to that Power, whose arms were then irresistible in the East, necessarily furnish very striking and instructive examples. Their last attempt to repel the Infidels, though unsuccessful, abounds with more instances of true magnanimity than are to be met with in any other history of so short a period. See JAC. BOSIO. *Istoria della Sac. religione et illma militia di San. Giov. Gierosolim*, part. 2. lib. 1. and particularly lib. 2. part. 2. for an epistolary address of the Grand Master to all the Christian Princes of Europe. Their History is also written by L'ABBE' VERTOT, in 4 vols. 8vo.

N. B. The *Hospitalers* came into England about the year 1100, and were held in such esteem that their Superior was the first Lay Baron, and had a seat among the Lords in Parliament. At the Reformation they shared the fate of the other Religious Orders, and were totally suppressed, 32 Hen. VIII, c. 24.

<sup>c</sup> MORGAN'S Hist. of Algiers, Vol. I.

That

That nations of much higher antiquity than the Rhodians had cultivated the art of navigation both with military and commercial views, and had carried it to a considerable perfection, there is the clearest evidence. EUSEBIUS has given them the fourth place only in his catalogue of maritime States, who obtained the sovereignty of the sea, and fixes it at about 900 years before the Christian Æra, almost two centuries prior to the foundation of Rome. <sup>d</sup>

But though the Rhodians cannot claim the honour of being the earliest *Navigators*, they have an undoubted right to a much nobler praise, that of being the *first Legislators of the Sea*: for there is nothing upon record which can lead us to suppose any of those maritime powers which preceded them had

<sup>d</sup> The first in order are the CRETANS, 1406 years before Christ: next are the LYDIANS, 1179: thirdly the THRACIANS 1000; and fourthly the RHODIANS, 916 years before Christ; which, according to the Marbles, is the age in which HOMER flourished. EUSEB. *Chronicon*. Lib. 2. This part of his information, the Chronologist tells us, he derived from a work of CASTOR the Rhodian *Περὶ τῶν θαλασσοκρατησάντων*.



ever appeared in that character. There is therefore great truth as well as spirit in the assertion of an ancient Jurist—"That to erect as it were a throne for Justice, on the ocean, and to teach her to regulate the transactions of man on that unstable element, with the same firmness and precision as on land, was a grand and an *original* idea of the Rhodians.<sup>e</sup>" It is impossible to fix with any certainty the precise time when these celebrated SEA LAWS were first compiled. HARMENOPULUS of Thessalonica, a juridical writer of the 12th century, gives them the pre-eminence over all others as well in *antiquity* as authority, but does not tell us at what period they first appeared.<sup>f</sup> The most general opinion seems to be that they were probably compiled about nine centuries before the Christian æra, or soon after that time, when, as we have already seen, Rhodes first acquired the superiority on the seas, and

<sup>e</sup> DOCIMUS. *In Tractat. Tractatum.* Tom. 9, p. 642.

<sup>f</sup> Procheiridion Juris. Lib. 2. tit. 11.

maintained it for the space of 24 years.<sup>g</sup> There are some indeed who have called in question their great antiquity, attributing them to that age when the City of Rhodes was founded; which, according to STRABO, was in the days of the administration of Pericles at Athens, consequently five centuries later than is usually conceived. But the Geographer in the very chapter which contains this information, seems to have been aware that a conjecture of this sort might arise, and therefore warns his readers not to date the naval skill of the Rhodians from this event; for, says he, they were very famous as a sea-faring people even before the institution of the Olympiads.<sup>h</sup> After all, as there is no express authority for the date of these

<sup>g</sup> EUSEBIUS ut supra. The learned SELDEN says they were compiled in the days of JEHOSEPHAT, which agrees with this period. (*Mare clausum*. Lib. 1. cap. 10.

<sup>h</sup> STRABO. *Geograph.* Lib. 14. The first Olympiad, according to the received mode of reckoning at present, was 776 years before Christ, which makes STRABO's account coincide with that of EUSEBIUS, and with the conjecture of SELDEN.



laws, this part of their history must rest solely upon conjecture; nor can we boast of much accurate information on a point of greater moment, the time of their reception at Rome, and the degree of influence they held there; though here indeed our authorities are somewhat more clear and satisfactory.

Before the æra of Imperial Rome the subject is entirely involved in obscurity. From what CICERO says in admiration of the naval discipline of Rhodes,<sup>i</sup> no inference, I think, can be drawn of its regulating the Roman Marine at that time; indeed, from the silence of this writer in many places, where he had an opportunity of introducing some notices of those laws, it may be presumed they were not collectively extant at Rome in his days, though it appears probable that many of them were separately admitted before that period.\* If any reliance can be placed on those fragments of Imperial Edicts, usually prefixed to what is called a Collection of

<sup>i</sup> Pro Lege Maniliâ.

\* DIG. Lib. 14. tit. 2. DE JACTU.

Rhodian Laws, we must fix their first formal reception at Rome in the reign of TIBERIUS CLAUDIUS, whose sanction appears at the head of the compilation.<sup>1</sup> There is certainly no Emperor under whom an event of this sort was more likely to happen. We have numerous instances of his attention to maritime affairs, and of his particular affection for Rhodes. In the Roman Code are two Acts of Senate ratified by him, for protecting the persons and property of the shipwrecked.<sup>m</sup> SÜETONIUS has recorded various other acts for the regulation of commerce and the improvement of Sea Ports, especially that most material of all to the Roman People, the Port of Ostia.<sup>n</sup> To this may be

<sup>1</sup> These fragments, as well as the laws themselves, are in Greek. They are adopted by LEUNCLAVIUS in his *Jus Græco Romanum*, and by PECKIUS in his *Collection of the Rhodian Laws*; though many are inclined to suspect their authenticity. GOTHOFRED thinks them an Epitome of some larger Edicts at the head of an original compilation made by MICHAEL PSELLUS, or some writer of that epitomizing age. *De Imperio Maris*, cap. 8.

<sup>m</sup> COD. Lib. II. Tit. 4, 5. *De Incendio, Ruinâ, Naufragio*.

<sup>n</sup> The situation of this port shews, that not only the trade, but, in a great measure, the subsistence of Rome, must have depended upon it.



added the great privileges granted by him to such as should build merchant ships, and that remarkable indulgence with which he induced the Corn-traders to put to sea in the winter.<sup>o</sup> His regard for the Rhodians appeared upon a variety of occasions, and of this he gave them a most signal proof, by restoring them their liberties when he was laying many of the neighbouring states under heavy restrictions.<sup>p</sup>

From the words of this Emperor's Edict in favour of the Rhodian laws, it appears, that a body of Mariners and Merchants had petitioned him to give the Laws of Contribution, which hitherto had been partially applied, a general extent.<sup>q</sup> In consequence of which, by the advice of NERO, commis-

<sup>o</sup> "Negotiatoribus certa *Lucra* proposuit, suscepto in se damno, si cui quid per tempestates accidisset." SÜETON. *Vit. Claud.* cap. 18. Some writers think they discover the Origin of *Insurance* in this Act of Claudius. MOLLOY. *De Jure Maritimo et Navali.* B. 2. cap. 7. §. 1.

<sup>p</sup> SÜETON. ut sup. cap. 25.

<sup>q</sup> See this matter fully explained below, where the *Law of Ejection* is treated of.

sioners were sent to Rhodes to make the strictest enquiries into their Maritime Code, and from the articles specified in their commission it certainly must have been very comprehensive. They were to consult all the laws respecting Mariners, Ship's Masters, Merchants and Passengers; Freight, Partnership and Bargains; Trusts and Pledges; and besides this were to observe the Form of their vessels, the manner of constructing them, and to make enquiries into every circumstance that had any connection with naval matters.\*

This commission Claudius confirmed by a public decree, and delivered it signed with his own hand to the Consul ANTONINUS. There are some who contend that the whole of this transaction is to be referred to the reign of TIBERIUS, the successor of AU-

\* *Jus Navale Rhodiorum*, in Principio. Allowing the authenticity of this Edict, Rome is more indebted to Greece for legislation than is usually imagined by those who only take into consideration the Embassy which produced the Decemviral Code.



GUSTUS CÆSAR, founding their opinion upon the great affection which this emperor had for Rhodes, and the favour he shewed to its magistrates and men of learning.<sup>s</sup> But plausible as this appears, the supposition is destroyed by the very words of the Edict, which are so plain that it is surprising any doubt should have arisen on the subject. In the first place it was made at the suggestion of NERO, the successor of CLAUDIUS, whose partiality for that island was manifested on a variety of occasions. It is reported of him, when he dispatched Crato into Greece to collect the most curious works of art and bring them to Rome, that he excepted Rhodes, and ordered him to remove nothing out of that island. TACITUS says, that it was in a great measure owing to his persuasion too that Claudius restored its liberties.<sup>t</sup>

<sup>s</sup> The Emperor himself resided in the island seven years. See p. 24. note d.

<sup>t</sup> Annal. Lib. 12. It was probably on this occasion that the following epigram was written.

Ὡς παρὸς αἰλῆς, νῦν καίσαρος ἡ Ρόδος εἰμι  
Νάσος, ἴσον δ' αὖχ' αὖχ' ἀπ' ἀμφοτέρων.

In the next place we are told the Edict was delivered to the Consul ANTONINUS, who can be no other than that Q. ATERIUS ANTONINUS, the colleague of D. JUNIUS SILANUS, during whose office, according to Tacitus, Rhodes obtained her freedom.\*

After TIBERIUS CLAUDIUS, the next sanction which the Rhodian laws are supposed to have received, was from VESPASIAN, who in general terms is said to have confirmed them by an Act of Senate, in

Ἡδὴ σβεννυμένην με νέα κατεφωτίσεν ἀκτίς

Ἀλὲ, καὶ παρὰ σὸν φέγος ἐλαμψε Νερῶν.

Πῶς εἶπω; τινὶ μάλλον οφείλωμαι; ὅς μιν εδείξε

Ἐξ ἁλός, ὅς δ' ἤδη εὐσάτο θυμένην.

Lib. i. Antholog. ANTIPHILI Epig. cap. εἰς νήσους.

Nero was at this time only sixteen years old.

Thee, PHOEBUS, once, now CÆSAR I obey,

In splendor equal to the God of Day.

O'er my deserted Isle new lustre streams,

And Nero's glories darken Phœbus' beams!

Say, most my partial thanks shall Phœbus claim,

Or shall I reverence most a Nero's name?

That gave me first from Ocean's gulf to rise,

This rais'd my sinking Glory to the skies!

\* Loc. cit. A. D. 55.



the Consulship of Laurus and Agrippinus. There appears, however, to be something suspicious in the account, for it not only wants the concurrence of historians, none of whom take the least notice of the event, but the names of the Consuls under whom it took place are not to be met with in the *Fasti Consulares*.<sup>x</sup>

From TRAJAN they seem to have received no fresh authority, for neither this Emperor or ADRIAN are recorded to have done more than express their general approbation of them in the Senate.<sup>y</sup> The last fragment in this Collection is a Rescript of ANTONINUS PIUS, which, as it is well authenticated, will be more particularly considered below, in treating of the law DE JACTU, of which it forms one of the most curious paragraphs.

<sup>x</sup> GOTHOFRED. *De Imperio Maris*. cap. 10.

<sup>y</sup> In the Code, Lib. 11. tit. 4, 5. *De incendio*, &c. is a law of Adrian, which ordains, that the plunder of a wreck shall be repaid by the proprietor of the land on which the ship was cast.

We may reasonably ask, Why laws once established by proper authority, should afterward require such frequent confirmation? and this can be explained only by supposing it to have been a necessary declaration of the Emperor's good will towards the island, whenever it was restored to forfeited liberty; an act, the frequency of which we have had occasion already to remark.<sup>2</sup> Thus it appears that the binding authority of the Rhodian Laws at Rome depended solely on the Imperial Sanction, from which, it must be observed, that the influence they derived was merely conditional, and was not permitted to operate to the contradiction or derogation of the national laws. They were considered, as the laws of OLERON are by many of the maritime states of Europe, in the light of *Ratio Scripta*, as *voluntary*, not as *necessary* law; and, as a Code of Equity and general Justice, were applied in all naval suits, with the exception, however, of some particular laws, whose features were too se-

<sup>2</sup> p. 32.



vere to gain them admission into a system of polity so mild and reasonable as that of Rome.\* Upon this head a Jurist of the Greek Empire has observed, that there seems to have been two evils which attended the original Rhodian laws, namely, the dishonesty of those who were to interpret and apply them; and that, which attends all human institutions, an obscurity in their meaning from the necessary revolutions in the customs and manners of the world. The first evil gave rise to that cloud of glosses and conceits which have obscured, rather than elucidated, the original; and from the other have proceeded those various laws which sprang up, as occasion required, and which having never been formed into a separate body, it is now become difficult, and, in most cases, impossible to distinguish from the ancient Code.<sup>b</sup> It is much to be la-

<sup>a</sup> One of the laws rejected by the Romans, as unreasonably severe, was that which condemned to immediate sale any ship of war driven into a foreign port, even though no dispute subsisted between the parties.

<sup>b</sup> DOCIMUS. *In Calcem Juris Græco-Romani*. Edit. FREHER.

mented that so valuable a system of marine regulations, should not have survived in better condition. "JUSTINIAN, (as MOLLOY expresses it) was an obsequious admirer of the Rhodian Laws and incorporated them into his inestimable Pandects." Still we must regret, that they do not appear there in their original form and language. They are scattered so promiscuously over this immense compilation, and are besides so involved in the questions and interpretations of the Jurists, that for want of being properly specified by name, when they occur, they cannot with any certainty be selected from that body of maritime law which gradually accumulated under the Emperors. I am aware that many ingenious Civilians have exhibited a collection of naval regulations under the denomination of the Rhodian Laws, and have accompanied it with learned observations; and moreover that this collection has been adopted without scruple by some excellent writers on maritime affairs as au-

\* Introduction to his Book "*De Jure Maritimo et Navali.*"

D

then-



thentic<sup>d</sup>. SIMON SCHARDIUS published it in the middle of the sixteenth century, with a latin translation in 41 distinct titles, from a MS, he tells us, in the great PITHOU's Library, and this is the same copy which has been used by MARQUHARD, FREHER, and LEUNCLAVIUS, in their Editions of the *Jus Græco-Romanum*. Some few years after SCHARDIUS, a collection of the same kind was published imperfectly by PET. PECKIUS, whose work has been since completed by BINNIUS from a MS in the Library of NIC. HEINSIUS.<sup>e</sup> But, after all, it is scarcely pro-

<sup>d</sup> MORISOTI. *Orbis Maritimus*, Lib. 1. cap. 30. A book rich in materials for that great desideratum, a good Commercial History; which being, as MONTESQUIEU has observed, a history of the *Communication of Mankind*, must necessarily abound in events the most interesting and important, that can occupy the attention of a social being: he adds in the next chapter, that, the history of luxury would make a splendid part of this narrative. *Esp. des Loix*. Liv. 21. cap. 5 et 6. POSTLETHWAYTE's Translation of M. SAVARY's Dictionary of Commerce. Vol. 2. Art. Rhodes.

<sup>e</sup> There is a MS. of these Laws in the Bodleian Library, Num. 264. 18. presented among others to the University, at the instance of Archbishop LAUD, by SIR THOMAS ROE, Ambassador from King James I. to the Great Mogul, and afterwards to the Ottoman Court.

bable that these laws in their present form should be of Rhodian extraction ; for, though they are said to have been selected from JUSTINIAN'S Laws, they will be found upon comparison to bear very little analogy to any maritime cases in the Pandects. Add to this, that the Greek in which they are written is far from being pure. It abounds with those barbarisms which the language contracted at Constantinople. BALDUIN, in short (a profound Antiquary and an accurate civilian) does not hesitate to pronounce at once of them (somewhat too harshly indeed) that they are "crude farragoes of naval matters.<sup>f</sup>" They form a complete Title in the

<sup>f</sup> *De Lege Rhodiâ Comment.* p. 193. edit. Basil. To save those, who wish to consult these cases, the trouble of searching for them through the Corpus Juris Civilis, I have here set down with their proper references some of the principal titles, that bear any relation to navigation and commerce. De Negotiis gestis. Dig. lib. 3. tit. 5.—Nautæ, Cauponis, Stabularii ut recepta restituant, 4. tit. 9.—De Exercitoriâ Actione, 14.—tit. 1. et Cod. lib. 4. tit. 25 —AD LEGEM RHODIAM, DE JACTU, eod. tit. 2.—De Institoriâ Actione, eod. tit. 3. et C. 4. tit. 25.—De nautico fœnore, 22. tit. 2. et C. 4. tit. 33.—De incendio, ruinâ et naufragio, 47. tit. 9.—De commerciis et mercatoribus, C. 4. tit. 63.—De annonis et tributis, C. 10. tit. 16.—De Classicis, C. 11. tit. 12.



BASILICAL CODE and from this circumstance together with much internal evidence ( notwithstanding they are said to be extracted from the 14th book of the Pandects ) it is highly probable they are a compilation of the 9th or 10th Century.\* It is not necessary to enter into a particular exposition of them. For this I must refer my reader to some of the works I have mentioned, particularly to that of VINNIUS, in whose commentaries he will find much historical and juridical information. The whole collection consists of 51 articles, all of them immediately relative to maritime affairs. The form however in which they are presented to us appears to be rather defective in point of order and perspicuity. In some places, for instance, Laws of the

—De litorum et itinerum custodiâ, C. 12. tit. 45.—De naviculariis, seu naucleris, publicas species transportantibus, C. 11. tit. 1.—De prædiis et omnibus rebus naviculariorum, eod. tit. eod.—De navibus non excusandis, eod. tit. 3.—Ne quid oneri publico ponatur, eod. tit. 4.—De naufragio, eod. tit. 5.—De nauticis usuris, Authent. Collat. 8. tit. 6.

Besides these there are some others, of which little more than the bare titles are extant, that relate chiefly to the wages, privileges, and punishments of seamen.

\* Lib. 5. 3. tit. 8.

same tendency are separated by those of a very opposite complexion, and in others, articles are connected together, whose subjects do not seem to bear any affinity.<sup>b</sup> To consider it as a marine Code, it is far from being complete, but if we allow its pretensions to originality and view it as a remnant saved from the wreck of time and barbarism, it certainly affords an extremely valuable specimen of ancient jurisprudence, since fortunately there are very few circumstances of any considerable importance for which it does not in some measure provide. Such as for the hiring and freighting of Ships — The transporting of passengers and goods — The delivering of things received in good condition — The borrowing and trusting of money for sea voyages — The duties, wages &c. of mariners, and above all, The rate and quality of contributions for losses in common danger and for the salvage of goods : indeed

<sup>b</sup> This is the case with Articles 9 and 10, which are separated from the rest, on Ejection and Shipwreck, by a variety of laws respecting Contracts, Freight, &c. neither is there any obvious correspondence between the 7th, 8th and 9th articles. BASILIC. Lib. 53. tit. 8.



if we even agree to pronounce it a compilation of the lower empire, its value will still be great, as we may fairly conclude it to have been used as an Epitome or Manual formed out of some original Code. The objection made to its present form, might easily be removed, as it is capable of very methodical arrangement. The whole for instance, might not improperly be divided into two parts, *MERCANTILE LAW* and *NAUTICAL LAW*; and each of these be considered under the two separate heads of *Civil* and *Criminal Jurisdiction*. In the *FIRST PART* would be comprized all those articles which have any reference to *Commercial Intercourse*, such as Freight, Average, Salvage, Loans,<sup>i</sup> and all bargains respecting contingencies to which a vessel is liable before its departure during the voyage, and on its

<sup>i</sup> The ancients always observed a distinction between the Interest of Money lent by Land and by Sea; the latter (called by the moderns *Bottomry*) was by them termed *Fœnus Nauticum*, which, on account of the great hazard of the lender, was permitted to be exceedingly high. See this fully treated of, DIG. Lib. 22. tit. 1. *De usuris*, &c. and tit. 2. *De Nautico Fœnore*; and, for the modern practise, MOLLOY, *De Jure Marit et Navali*. Book 2. chap. 11.

return to port.<sup>k</sup> To the SECOND PART would belong such Laws as regulate the conduct of the master, the mariners, and the passengers, towards each other; their management and care of the vessel, and the privileges, duties, and wages, allotted to their several stations.<sup>l</sup> When this arrangement was made, the second distribution into criminal and judicial Law would be obvious,<sup>m</sup> and if into this collection were incorporated under their proper heads, all the other Sea Laws which occur in the Roman Code, such as the opinions and commentaries of the old Jurists in the Pandects with the Imperial Constitutions contained in the Code and Novels, we should then obtain perhaps some clear idea of what at present lies in a very dark and deranged condition, the State of the *ancient Maritime Law*.<sup>n</sup>

<sup>k</sup> See, in particular, Art. 9. 11. from 16. to 24. 27. 37. 42. 43. 44. 45. 46. and Articles 10. 27. 29. 30. 32. 41. which treat of Shipwreck.

<sup>l</sup> Particularly Art. from 1. to 8. and 12. 13. 15. 34. 36. 38. 48. 50. 51.

<sup>m</sup> The laws which may strictly be called *Penal*, are contained in the eight first Articles, and in Articles 12, 13. 15. 38. 48. 50. 51.

<sup>n</sup> DR. ZOUCH's small but comprehensive work, *Description*



It is worthy of remark that among the Rhodian Laws, those of Shipwreck and distress at sea occur most frequently. The arts of ship-building and of navigation, though zealously cultivated by many nations of antiquity, were, if compared with their present state, extremely rude and imperfect. The outward form and structure of their ships was ill contrived for security or expedition, even in the most prosperous weather, and rendered them in tempests totally unmanageable; nor was it much improved by the shape or disposition of the sails and rigging.<sup>o</sup> If to these defects we add the moderate skill of mariners, for the most part confined to particular coasts, ignorant of any fixed principles of their art and unassisted by that infallible guide of mo-

*Juris et Judicii Maritimi*, is too elementary, though perhaps if it were published with a Commentary and Notes illustrative of modern Sea Laws and usages, it would sufficiently answer the purpose. PECKIUS and SCHARDIUS are too much occupied in verbal criticism to afford any satisfactory expositions of their subject. See their editions of *the Naval Laws of Rhodes*.

<sup>o</sup> MONTESQUIEU has treated particularly of this matter. *Esprit des Loix*, Liv. 21. 6. and recites many curious facts of commercial geography.

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dern navigators, the Compass : can we be surprized at the caution with which they entered on a voyage? or at the extreme care of the legislature in preparing them to surmount the various accidents to which they were so liable?<sup>p</sup> What is here advanced must not be understood to contradict any former assertions of the nautical skill which many nations of antiquity displayed ; For it is founded merely on a comparison of their efforts with the improved exertions of modern days. Whoever consults the remarkable facts on this head collected with infinite labour and discernment, by HUET, in his instructive *History of the Navigation and Commerce of the Ancients*, must be struck with the number, boldness and extent of naval expeditions carried on under such

<sup>p</sup> See the writers *De re Navali*, in the 11th vol. of GRO-NOVIUS's *Thesaurus Antiquitatum Græcarum*, particularly LAZARUS BAYFIUS, who has given plates of various kinds of ships and naval implements, from antique Marbles, Medals, and Bas Reliefs. The curious reader will also find much information with respect to the state of the ancient marine establishments in the 22d and six following chapters of the first Book of MORISOTUS, with a good collection of Naval Coins and Inscriptions.

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disadvantageous circumstances. In short considering the various obstacles which those early mariners had to encounter, and the few motives to encourage them, instead of arraigning their ignorance, we ought rather to admire the progress they made in an art, which, of all others, most requires the accumulated labour, ingenuity and experience of ages to bring it to any degree of perfection.<sup>9</sup>

Though it was my original design to have confined these enquiries to some leading historical facts relative to the ancient sea Laws, I cannot avoid giving the following specimen of their wisdom and equity. The celebrated LAW of EJECTION, as it is called,<sup>1</sup> which forms the second title in the fourteenth Book of the Digests, has always been considered as an extract of indubitable authenticity. It contains various provisions for security against

<sup>9</sup> Piracy was not the least of the dangers which attended Navigation in those days. JUSTIN says, that, among many nations, "*Latrocinium Maris Gloriæ habeatur.*" Lib. 43. cap. 3. and MONTESQUIEU gives some good reasons for their contracted intercourse by Sea. Liv. 21. 7.

<sup>1</sup> *De Lege Rhodiâ*, DE JACTU.

danger and for reparation of losses sustained at sea, particularly in cases of Shipwreck. Each of the articles of which it is composed, appears to have been derived from some original Code of Rhodian Law, and is illustrated by the comments and opinions of the most learned Jurists. From their works they were again selected by the compilers of the Digests, and arranged by them in their present form. The adversaries of Justinian might here perhaps with some shew of justice give vent to the spirit of *Anti-Tribonianism*; for there is great reason to suppose that many other articles of similar tendency, which occur in the Imperial Law, were drawn from the same source, though it is in this title alone that any such acknowledgment, either express or implied, can be found. It would be well also if on this occasion as on many more, the carelessness and inaccuracy of the Compilers were the only things complained of by their enemies, who have seldom omitted an opportunity of imputing to their disingenuity those losses, which more candid minds would attribute

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bute to the natural decay of time, and the ravages of Barbarism.<sup>f</sup> But to return.

It is provided by the Rhodian Law, that “if for the sake of lightening a ship in danger at sea an *ejection* shall take place, that which was given up for the general good, shall be replaced according to the proportion of what is saved, by a *general contribution*.”<sup>t</sup> Nothing can be more equitably devised than this Law, which has by its intrinsic merit gained admission into all the marine codes of succeeding times.<sup>u</sup> To render this act of

<sup>s</sup> An ingenious Civilian, now living, speaking of Justinian's being suspected to have destroyed the original works from which his Compilers copied, humourously compared his conduct to that of a clumsy artist, who having been employed to paint the sign of a badger, set persons to destroy all the badgers in the neighbourhood, with a view of preventing a discovery of his unskilful imitation.

<sup>t</sup> DIG, Lib. 14. Tit, 2. *De Lege Rhodiâ, De JACTU*. §. 1.

<sup>u</sup> “William the Conqueror and Hen. 1st, made and ratified this law, concerning goods cast overboard by mariners in a storm, in imitation of the ancient Rhodian Law, *De Jactu*.” MOLLOY, *De Jure maritimo et navali*. Book 2. chap. 6. See also MIEGE'S *Laws of Oleron*, Art. 8, 9, 10. the *Wibsey Laws*, Art. 20, 21. 38. 46. and the *Laws of the Hanse Towns*, Tit. 8, 9. with REINOLD KURICKE'S Commentary. N. B. All these may be found in MALYNE'S *Lex Mercatoria*.

*ejection*

*Ejection* perfectly legal, it must be observed, that the three following cases ought to concur: First, the ship must be in evident danger of perishing with her Cargo, Secondly, the resolution taken by the Captain on this occasion, must be in consequence of a consultation held with his officers and crew on the subject, And lastly, the ship and cargo must appear to have been saved by these means.

Agreeably to these three axioms it is to be concluded, that the partial loss, thus voluntarily incurred to prevent a total one of the ship and cargo, ought to be equally borne by the ship and her remaining lading.<sup>w</sup> After this general position, we have a variety of cases stated, and some particular rules and exceptions specified. For instance, “They, whose property has suffered *Ejection* upon the foregoing terms, shall have Action against

<sup>w</sup> BEAUW. *Lex Mercatoria*. Article *Salvage*. p. 135, &c. And this conforms with the rule of modern practice, which holds that average is only admissible in cases where the loss of one man's goods contributes to the safety of another's, and not in all cases of a partial loss at sea. SHOWER'S *Cases in Parliament*. 20.



the Master of the ship, and the Master against those who saved their property in consequence of the *Ejection*, in order that the loss may fall equal.<sup>x</sup>”

This is in exact conformity with a well known maxim at this day, namely, that as the *Common Law* looks upon the Goods and Cargo as a pledge for the Freight, so the *Marine Law* looks upon them as a security for answering any Average or Contribution, and with this view, the Master is bound not to deliver the Goods till the Contribution is settled, they being tacitly obliged for the one as well as the other.<sup>y</sup>

“For any damage sustained by the ship and its tackle by a storm, no contribution can be demanded; any more than an artificer who shall break or injure his tools, can require reparation from the person for whom he was working.<sup>z</sup> “But if (as it is specified

<sup>x</sup> Tit. 2. § 2.

<sup>y</sup> MOLLOY. Book 2. chap. 6. §. 7.

<sup>z</sup> Tit. 2. §. 2. MOLLOY. *Loc. cit.*

after-

afterwards) this damage did not arise by storm, but was voluntarily incurred, and with the general consent; then, in conformity with the first clause, it must come into the contribution.<sup>a</sup>”

“Every kind of Goods, even Jewels, Money, &c. which could not have been a burthen to the ship, are nevertheless not exempted from contribution.” Indeed it should seem reasonable that their proportion ought to be greater according to their value.” But apparel in Use, Provisions, and all things necessary for the sustenance of the crew, are exempt.”

“In settling the terms of contribution, the goods lost, are not to be valued at what they might fetch if carried to market, but according to the original price they were purchased at; and on the contrary the goods, which are to contribute, must be estimated not at what they originally cost, but at what

<sup>a</sup> Tit. 2. §. 2.

they



they will sell for. "Quoniam (as it is expressed) *detrimenti non lucri fit præstatio.*"<sup>b</sup>

"When in order to lighten a ship coming into port, part of the cargo is put into a skiff or boat, and this shall perish in the sea, the ship being saved, a Contribution is required, to indemnify those, whose property was thus, as if by *Ejection*, sacrificed for the general good. But if the ship perish and the boat be preserved, no contribution is to take place; because it is never allowed but where ships arrive safe."<sup>c</sup>

<sup>b</sup> The modern custom has been, that if goods are thrown over before half the voyage is complete, then they are to be valued at the price they cost; if after half the voyage, then at the price which goods of the same quality shall sell for at the place of the ship's discharge. In many cases, however, the Rhodian Law still continues in force. BEAUW. Loc. cit. MOLLOY. Loc. cit.

<sup>c</sup> By the Law of the Admiralty, if a ship be lost before her unloading, no freight shall be paid, but every one must bear his part of the loss, and in such case even the mariners lose their wages. MOLLOY. B. 2. Chap. 4. and B. 2. Ch. 3. 6. 7. For, as it is observed, *Freight is the Mother of wages*, and wherever freight is due wages are due also, and *vice versa*, provided the mariners have honestly performed their parts. l. 3 & 4.



If

If in a storm by an ejection of one man's property the ship be saved for a time and afterwards perish, and it so happen that the goods then on board are picked up by Divers,<sup>d</sup> they must be contributory to the ejected goods,

<sup>d</sup> *Divers*, called by the ancients *Urinatores*, were incorporated at Rome in the same society with the Fishermen, as appears from two inscriptions in GRUTER ;

FL. ANNIO ANNÆO LEMONIA FORTUNATO PISCATOR. URINATORI. p. CCCLIV. and again. TI. CLAUDIO ESQUIL. SEVERO DECURIALI LECTORI PATRONO CORPORIS PISCATORUM ET URINATORUM. p. CCCXCI. They are alluded to by MANILIUS in these lines,

“Corpora qui mergunt undis ipsumque sub antris  
Nerea et aquoreas conantur visere nymphas,  
Exportantque maris prædas, et rapta profundo  
Naufragia, atque imas avidi scrutantur arenas.”

*Astronom Lib. 5. v. 431.* see also a highly coloured description, beginning with

“Cæruleus ponto cum se Delphinus in astra

“Erigit” &c. and ending at v. 448.

and by LUCAN,

—“animam servare sub undis.

Scrutarique fretum, si quid merisset arenis.” Lib. 3. v. 697.

The first institution of CORPORATE, OR, COLLEGIATE BODIES at Rome, appears to have been by Numa, who in order to unite the Romans and Sabines more closely, took away the distinctions which had subsisted between them, and distributed the two people indiscriminately into separate Fraternities, according to their different trades. PLUTARCH. in *Numa*. P. 155. edit. Bryan. For full information on this subject consult DIG. 3. tit. 4, and 47. tit. 22, and 46. tit. 1. 22. with TAYLOR'S *El. of Civ. Law*, art. *Senatus-consultum Marcianum*. p. 567—573.



which on the contrary if recovered are not liable to the same conditions ; because the goods which *sunk with the ship*, were not, as in the case of those *ejected*, sacrificed for the general safety. . And here a question is put, “whether goods which have received injury on board be liable to contribution, because it seems unreasonable for a person to suffer doubly?” It is answered, “that the person is to contribute according to the reduced value of his property from the injury it has sustained.” Another question then arises, “whether if the damage has accrued to him in consequence of an *ejection*, which has exposed his goods to the weather, or has broken them by violent usage, he is to contribute.” And it is decided, “that he is to deduct from the rate of the

The rate of *Salvage* was thus settled by the ancients, as appears in the collection of Rhodian Laws. A person saving any part of a wreck at sea, shall have one *fifth* of what he saves. Art. 45, and a *third*, a *half*, or a *tenth*, according to the depth of water. A *tenth* for Salvage on the coast, and a *fifth* for him, who saving himself, brings something to shore. Art. 47. see also BEAUW. *Lex Mercat.* art. *Salvage*, p. 135 &c. for the modern practice. A proportion is also given according to the bulk of the Salvage, Gold and Silver paying less than coarse and burthenfome goods. Art. 40.

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contribution the amount of his own damages and to contribute the remainder." But then again it is said, "suppose the damage is greater than the rate of contribution—in that case the damaged property must be brought into the average; for it is very immaterial whether it had been totally spoiled, or thrown overboard, and if in the latter case a recompense be made to the owners, it is but just in the former, when the injury can be proved to have happened in consequence of an *Ejection*."\*

"If a ship be cast away, the goods saved from wreck are not liable to contribution, for the same reason that property saved in a boat is exempt: and because as it is elsewhere said; property thus saved, belongs as entirely to the owner, as if it had been rescued from fire."

"If by the violence of a storm, or any other accident, the masts and rigging be damaged or destroyed, and the Captain put into port to make a temporary refitment, for this expence no contribution can be required."

\* Lib. 14. Tit. 2. §. 4.



There appears to be something unreasonable in this, for the expence of refitting was certainly incurred for the safety of the Cargo. There is much more equity in the rule at present observed, which enjoins, that although the charges of bringing a ship into port are not to be brought into an average, yet when this is done from indispensable necessity, to escape a storm, to refit and so forth, then even the wages and provisions are brought into an average, and all the expences occasioned by this necessity are discharged by general contribution.<sup>f</sup>

“Goods cast overboard to lighten the ship make no *Derelict*, but are to be restored to their owners if found, just as in the case of a burthen which a weary man has laid by the road side, while he rests himself or goes in search of assistance.”<sup>g</sup>

<sup>f</sup> BEAUW. p. 137.

<sup>g</sup> It is necessary to state the following distinctions which are observed in property lost at sea. *Wreck* is properly applied to goods, which, when a ship is sunk, or otherwise perished, are driven to land by the sea. “*Quæ naufragio ad terram appelluntur.*” For if the goods are found floating on the sea, they are called

“ If you freight a ship, and your goods, without your consent, and no necessity compelling, be put on board another ship, in worse condition than the first, and are lost, you have action against the master with whom the agreement was made ; but the action will not lie, if both the ships perish in the voyage.” The present rule is, that if there be extreme necessity and an empty ship is passing by, the master may transfer the goods, and if that ship perish, his conduct is unim-

called *Flotsam*. When they are cast overboard to lighten a ship, which notwithstanding this, afterwards perishes, they are, *Jetsam*; and *Lagan* or *Ligan*, when having been ejected and sunk to the bottom, the Mariners with an intent to get them again, fasten to them a Buoy to mark the place where they may be found. The *Court of Admiralty* therefore cannot hold plea of *Wreck*, but it must be tried before the king's justices at Common Law, as being *infra Corpus Comitatus*, the proper Jurisdiction of the Admiralty being *supra altum mare*. 1. Instit. 260. and a note of SELDEN ON FORTESCUE *de laud. leg. Ang.* Cap. 32. & 2 Instit. 168. But of the other three, *Flotsam*, *Jetsam*, and *Ligan*, the Admiralty hath Jurisdiction. BRACTON lib. 3. fol. 120.

*Derelict*, differs from each of these in being goods cast into the sea without any hope or likelihood of ever recovering them, and are so wilfully given up by the owner. MOLLOY. B. 2. Chap. 5. §. 4.



peachable; but then it must appear that the ship seemed *probable* and *sufficient*.<sup>h</sup>”

These are the principal Clauses in that title of the Digests, *De Lege Rhodiâ* DE JACTU, which as they all relate to one point of maritime justice, I have thought proper to select. There are a few others intermixed with them upon different subjects, such as *Contracts*, *Piracy*, and *Freight*, which it is not here necessary to mention. But what has rendered this Title particularly curious, is a small historical fragment, there inserted, from some collection of Rhodian laws by VOLUSIUS MÆCIANUS, a jurist of the 3d century. It is a rescript of ANTONINUS PIUS in answer to a petition of Eudæmon, a merchant of Nicomedia, to that Emperor, wherein he states, that being shipwrecked among the Cyclades, his property was seized upon by the Officers of Revenue.<sup>i</sup> He addresses the Emperor by the

<sup>h</sup> MOLLOY. Book 2. chap. 4. §. 5.

<sup>i</sup> The Cyclades were Islands terrible to mariners and appear to have been notorious for shipwrecks. VIRGIL says of them  
——“ Spar-

title of Sovereign, *Κυριος*, and he is answered in the true spirit of a Roman, who considered the world as one country, of which Rome was the principal city.<sup>j</sup> *Εγω μεν τ'ε κοσμος κυριος, ο δε νομος της θαλασσης. Τω νομω των Ροδιων κρινεσθω τω ναυτικω.* “I am Sovereign of the world, it is true, nevertheless controversies at sea must be determined by the maritime laws of Rhodes, except (as he adds) in cases where they contradict our own laws.<sup>k</sup>” This answer has given rise to various controversies on the authority of the Rhodian Laws at Rome; and to innumerable disputes whether the em-

— “*Sparsasque per æquor  
Cycladas et crebris legimus freta concita terris*”

*Æn.* 3. 237.

and Horace frequently mentions them in this light. See lib. 1. *Od.* 1, lib. 3. *Od.* 29, et 1. 14.

<sup>j</sup> “*Gentibus est aliis tellus data limite certo;*

“*Romanæ spatium est Urbis et Orbis idem.*”

*Ov. Fast.* lib. 2, v. 243.

<sup>k</sup> The application of the Rhodian Law to this particular case was in every light proper: for we are told, there was a separate Governour over the five provinces of Scythia, Mysia, Caria, the Cyclades, and Cyprus, but that in maritime cases the Governour of RHODES had supreme jurisdiction. See *Novel* 41, Tit. *De Quæstoribus, id est, Præfectis Insularum.* et Nov. 50. et 163. TIBERIUS, during his retirement there, acted with this power. SUTTON, *Vit. Tib.*



perors claimed any dominion upon the seas. There certainly is nothing here which implies a denial of this part of the imperial power; for as GOTHOFRED justly observes, “non *Imperium*, sed *Judicium* tantum Legi Rhodiæ, hac lege committit,<sup>1</sup>” and even this is with limitations, for it is no longer admissible than while it agrees with the laws of Rome. The same writer gives the following rational paraphrase of this answer, “You have done right, Eudæmon, in applying to me for redress; conceiving, as it appears you did by calling me in your petition *Lord of the World*, that I might extend my authority at pleasure over the seas: But there are certain laws of Rhodes established at Rome for regulating naval matters, and therefore, they must decide in this case.<sup>m</sup>”

<sup>1</sup> De Imperio Maris. cap. 7.

<sup>m</sup> The Emperor's delicacy in this matter deserves our attention. It is well known that the ancient Laws gave Wreck to the Sovereign. Dig. Lib. 49. tit. 14. *De Jure Fisci*.

“Quicquid conspicuum, pulchrumque est æquore toto,

“*Res Fisci* est ubicumque natat.”

JUVENAL Sat. 4. v. 54. and upon this subject many laws and edicts occur, see *De Incendio, Ruinâ, &c.* Dig. Lib. 47, tit. 9. et Dig. 43. 12, 13, 14, 15. et *De acquir. possess. et rerum Dominio*, et COD. lib. 11. Tit. 4 and 5.

Were it necessary, a variety of testimonies might be brought, to shew that the empe-

ANTONINUS, very humanely altered this rule, declaring, that in cases of distress "Fiscus meus sese non interponat. Quod enim Jus habeat Fiscus in alienâ calamitate, ut de re tam luctuosâ compendium sectetur?" COD. Lib. 11, tit. 5. *De Naufragiis.*

This reminds us of an Ordonnance of LOUIS the 14th, which sets aside the old law, and permits the proprietors of shipwrecked goods to reclaim them within a year and a day, paying the expence of Salvage. *Ordon. de la Marine* Art. 29, tit. 9, Liv. 4. and we are informed that even after this prescribed time the claimants might recover them. "Le Roi & M. L'Amiral ayant toujours eu la Grandeur d'ame d'admettre les reclamations, quoique faites *hors du tems prescrit.*" VALIN, *Sur L'Ord. de la Marine*, loc. cit.

WRECK, originally in this country was given to the Crown for two main reasons of Common Law. 1st, That the property of all goods must be in some person. 2d, That such goods as no person can claim property in, do belong to the King by his Prerogative, and when Navigation and Commerce were less common and perfect, it was difficult to prove in whom the property of wrecks at sea was. Others have given as a reason, that Wreck was bestowed on the King to indemnify him for his charges in scouring the sea of Pirates. 2 *Instit.* 167. Wreck may belong to the *Subject* either by Grant from the King or by Prescription. 2 *Instit.* 168. Anciently, Wreck of the sea &c. was "Primi Inventoris, quasi totius Populi, sed postea ad Regem translata fuerunt, quia non modo totius populi, sed Reipublicæ etiam caput est." 2 *Instit.* 168. *Doctor and Student.* Dial. 2, chap. 51.

The Laws of OLERON are very severe on the plunderers of a Wreck. See Art. 24, 25. 28. 30, 31. They are to suffer ex-  
com-



rors were actually considered and claimed to be held Lords of the Sea, and that even

communication, and capital punishment, without the protection of any custom or statute whatever, and if they do violence to the persons of the shipwrecked, they are to be plunged in the sea till they are half dead, and then to be drawn out and stoned to death. "A Lord of a Manor, who shall connive at these proceedings shall have his goods sold for pious uses, and he himself shall be fastened to a stake in the midst of his Mansion House, which is then to be set on fire at the four corners, and burnt to the ground, and a market to be established on the spot, for the sale of hogs, and swine, to all posterity."

But by Stat. West. 1. cap. 4. & 17. E. 2. c. 11. If a man, a dog, or a cat, escape alive, or the party to whom the goods belong, claim within a year and a day, they are his; and this Royal claim was renounced by Rich. I, in the Isle of Oleron. *Ol. Laws*, cap. 47. HOVEDEN's *Annals*, fol. 678. By a law of Sicily A. D. 1221 the plunder of shipwrecked goods was made capital. *Pragmatic. Regni Siciliae*. Panorm. 1647.

Indeed a person under these circumstances was an object of protection by the Laws of almost all the civilized states of antiquity.

- ΝΑΥΑΓΟΣ ἢ καὶ ξένος, ἈΣΥΛΗΤΟΝ γένος

"Being a SHIPWRECKED stranger, I am a person who ought NOT TO BE PLUNDERED." Euripid. *Helen*. ver. 456.

And the acute author of *Observations on the Statutes chiefly the more ancient*, thinks it "much to the honour of humanity, that in every part of the globe, where any sort of civil policy prevails, making prisoners those who are shipwrecked on their coasts, is peculiar to Japan; nor was this barbarian practice introduced among them till after the expulsion of the Portuguese, who had made very unjustifiable attempts on their Religion and Government." p. 17.

private

private persons, by their permission, enjoyed peculiar privileges upon that element. But I refer my reader to the 13th Chapter of GOTHOFRED's excellent Treatise, *De Imperio Maris*, and to the 25th and 26th Chapters in the 1st Book of SELDEN's *Mare clausum*, a work which has given the fullest answer to those modern disputants who, by ingenious refinements and hasty interpretations, have attempted to deny, that any nation or prince, ever did or can, with justice, claim an exclusive right over the seas. I cannot, however, quit the consideration of this law without taking notice of a very singular Correction of Antoninus's Answer given us by SAMUEL PETIT. Instead of ὁ δὲ ΝΟΜΟΣ της θαλασσης, he reads, ὁ δὲ ΑΝΕΜΟΣ, which he thus explains; "With regard to your shipwreck I can give no redress, nor is it in my power to prevent it in future. I am Lord of the *Land* it is true, but the *Wind* commands the Sea; and he then proceeds, as to a second clause in the answer, to refer him to the Rhodian

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dian Code for relief against his plunderers.<sup>n</sup>"

<sup>n</sup> Miscellan. 3, cap. 11.

With respect to the argument *De Maris Dominio*, there are very early records that Nations of high antiquity, claimed and held an exclusive sovereignty over certain seas; for example, it is shewn in the conditions of that Treaty between Athens and Lacedæmon in the fourth Book of THUCYDIDES, and in those which are to be found in the third Book of POLYBIUS, between Rome and Carthage. The inferences which can be drawn from the opinions of the Roman Lawyers on this article are very indecisive, for if one has asserted, "*Mare esse in primævo jure quo omnia erant communia*," another contends, "*Videmus, de jure Gentium, in Mare esse regna distincta, sicut in terrâ.*"

DION CHRYSOSTOM in his 34th oration says, that TRAJAN, in extending certain privileges to Tharsus, gave her right and dominion over the river (Cydnus) and over the adjacent Seas, and in Dig. Lib. 4. tit. *De rerum Divisione*, we find the Emperor ANTONINUS communicating the same right to the Fishermen of Formia. The exclusive privileges enjoyed by private individuals on the sea, for the purposes of Luxury, were derived also from Imperial Authority, and serve for frequent topics of ridicule, though never of complaint, to the Roman writers; which would scarcely be the case, had they been considered as usurpations. See PLINY, *Hist. Nat.* Lib. 9, cap. 54. SALLUST, *Bell. Catilin.* §. 17. MARTIAL. Lib 10, Epig. 30.

For what regards our own country in this dispute, it may be proved, by many ancient records, and by a series of undeniable evidence brought down through various ages, that the Kings of England did very early claim to be, and were acknowledged Sovereigns of the sea, so much of it at least, as is the object of the controversy. 4. Instit. 142. SELDEN, *Mare Clausum.* c. 27.

For

Having thus endeavoured historically to trace the origin, progress and influence of the Rhodian Laws at Rome, in as clear a manner as the imperfection of the materials

For I apprehend the warmest advocates for exclusive privilege thereon, never attempted to extend it either to the Atlantic, or the Southern Ocean. Thus king Edgar is said *Quatuor maria vindicare*, and SIR J. BURROUGHS cites a record in the Tower, having for its title "Of the Sovereignty of the *English Seas*, and the Office of Admiral thereon." *Sovereignty of the British Seas asserted*. p. 7. and Edward III. calls himself and his predecessors, "*Domini Maris Anglicani circumquaque et etiam Defensores*" SELDEN, notes on Fortesc. c. 32. The extent of this dominion was particularly ascertained by a Treaty at Westm. Feb. 9. 1673-4, to be from Cape Finisterre, to the middle point of the Land Van Staten in Norway.

The Duty of the FLAG, which is a consecutive acknowledgment of this dominion, is as old as the reign of King John, since whose time it has been constantly asserted by his successors. This mark of respect indeed had always appeared to foreigners so unquestionably our right, that the first instance of its being inserted as an Article in any Treaty was in the year 1653. *Treaty of Peace between the Commonwealth of England, and the United Provinces*. Art. 15.

It is worthy of remark that, at the very time when the warmth of this controversy had excited a general jealousy concerning the *Imperium Maris*, the Venetians asserted their right over the Adriatic in a memorable instance. They insisted upon, and obtained the privilege of transporting from Naples to Trieste, the king of Spain's sister, who was espoused to the king of Hungary, threatening, that if the Spaniards should presume to send any ships into their Gulph for this purpose, they would attack them as enemies to the Republic. A. D. 1630. PANCIVS. *De*  
*Dominio*



will permit, and to give a slight specimen of their character, it remains to enquire in a summary way, what was their fate after the dissolution of the Roman Empire had produced a total change in the Inhabitants, Manners and Language of Europe.

The successive inundations of Northern Barbarism in the 5th and 6th Centuries, and the ravages of the Saracens on the Coasts and Islands of the Mediterranean sea in the 7th, necessarily gave a check to every species of liberal communication, and thus proved equally fatal to the interests of Literature and of Commerce. The latter in particular received a very severe blow, by the extinction of the Indian Trade, which had long been the principal

*Dominio Maris Adriatici. L. 2, c. 6,* and thus by one illustrious example they effectually put to silence all the learned arguments of their adversaries.

N. B. A fruitless attempt was made about half a century ago, to revive the controversy by MONS. DESLANDE in his *Essay on maritime power*, to which he appears to have been instigated by the COUNT DE MAUREPAS, Intendant of the french marine.

branch

branch carried on in the Greek Empire, by the way of Egypt. This was effectually cut off when the Saracens took possession of Alexandria. It is not however to be understood that commercial intercourse was totally obstructed. It still feebly subsisted, but the mode of carrying it on was changed. The Merchant, unwilling to transport his property over an element infested by a lawless enemy, to whose arms most of the maritime powers had yielded, and finding the principal ports and harbours either deserted or in possession of a people more inclined to plunder than traffic, sought other channels of communication.

The exchange of commodities was, during this period, chiefly transacted by means of inland traders or travelling merchants, who for this purpose established staples and enterpots, and thus contributed to aggrandize many of those towns which since have made so conspicuous a figure in Ger-



Germany and the Netherlands.<sup>o</sup> The foundation of many new commercial states was also laid in these ages, and, as the ancient channels became dry or obstructed, fresh sources of trade began to open on the western and southern coasts of Europe.<sup>p</sup>

The conquests of CHARLEMAGNE in Italy, and his establishment of CHRISTIANITY in the North, are considered, by some writers, as the causes of the revival of Maritime Commerce, since at the same time that he diffused a liberal and communicative spirit by the introduction of the true religion, he removed in a great measure the principal obstacles to its gratification, by scowering the sea of pirates and rendering that passage from the north to the south more safe and commodious.

But perhaps we are to look further back for the true cause. The furious ravages of

<sup>o</sup> ANDERSON'S History of Commerce. Vol. 1, p. 432.

<sup>p</sup> ANDERSON ut supra p. 235. CEDRENI *Compend. Hist. Par.* 2, p. 477. Edit. Paris. OCKLEY'S, *Conquests of the Saracens*,

ATTILA, the Hun, in the 5th Century, compelled many of the distressed inhabitants of Italy to seek for safety in the marshes and islands at the northern extremity of the Adriatic,<sup>9</sup> whence, in less than four hundred years after their settlement, arose the magnificent Mart of VENICE.<sup>1</sup> As early as the beginning of the 8th Century, we hear of her with a powerful fleet, defending the Exarchate of Ravenna against the Lombards,<sup>2</sup> and soon after this, defeating the views of Charlemagne, who, jealous of the preference which she gave to the Greek Emperors, had sent a large armament into the Adriatic.<sup>3</sup> It is to this State, in fact, that we are indebted for the revival of the commercial spirit in Europe. She seems first to have encouraged it in her neighbour and powerful rival, GENOA, by whose communication of the

<sup>9</sup> JORNANDES. *De Rebus Geticis*.

<sup>1</sup> The reader may compare CASSIODORUS Epist. 12, lib. 12, with lib. 12, Ep. 24. and consult MONTESQUIEU *Ess. Des. Loix*, Liv. 20. c. 5.

<sup>2</sup> *Essai de L'Histoire du Commerce de Venice*, and MURATORI, *Antichita Italiane*. Dissertazioni, 25<sup>ta</sup> & 26<sup>ta</sup>.

<sup>3</sup> *Loc cit.*



rich commodities of the East, a similar zeal was excited among the nations on the Baltic, who were themselves at last enabled to contend with them both, for the balance of commercial power.<sup>u</sup> The superiority however of the Italian Cities must be confessed; for at the time when THE HANSEATIC TOWNS, having run their career of glory, were gradually disuniting and yielding to the arms of neighbouring princes, Venice of herself was able to sustain, and in some measure defeat, the most formidable league suddenly raised against her, that is to be met with in the history of modern times.<sup>w</sup>

<sup>u</sup> DE MAILLY. *Histoire de Gennes*.

It must be observed that I here speak of *Maritime Commerce* only. Inland traffic was promoted and established by very different means. MONTESQUIEU traces it, rather whimsically, from the introduction of ARISTOTLE's Works, which first taught mankind to confound the lending upon interest with *Usury*, Περὶ Πολιτείας, lib. 1. cap. 9, 10. and encouraged a spirit of persecution against the Jews, who, wearied with prescriptions, confiscations, and extortions, at length found it necessary to render their property *invisible*. They invented a secret and compendious mode of negotiation by Bills of Exchange and Paper Currency, and thus gave, as it were, a soul to mercantile communication. ESP. DES LOIX, Liv. 21. cap. 16.

<sup>w</sup> MAIMBOURG, *Histoire de la Ligue*. The League of Cambray,

If, during the period called the middle ages, any form of maritime justice was acknowledged, it probably was such as those fragments of the Rhodian Code, preserved in the Roman Law, afforded. A variety of causes contributed to preserve an active intercourse between the Italian Provinces and Constantinople, where many parts of Justinian's compilation were still read in the greek language, and where a new body of jurisprudence had recently been formed, into which the Laws of Rhodes were admitted.\* We have no authority for supposing that any new system had been drawn up more early than the close of the 11th century. At that time the people of AMALFI had risen into great repute for skill in navigation, and activity in trade.

bray, to which I allude, took place in the year 1510, a period when the naval powers of Denmark and Sweden had greatly weakened the HANSEATIC CONFEDERACY, and when the French and English, by withdrawing their principal cities from the Alliance, threatened, for a time, its total annihilation.

\* The Codes of LEO and CONSTANTINE, Lib. 53. tit. 8. See *Chronological View of Roman Law*, p. 67.



They were respected by all their neighbours on the mediterranean coasts, and enjoyed peculiar privileges in the east.<sup>y</sup> To this people we owe the first Code of modern sea laws, called, from the place of its compilation, *TABULA AMALFITANA*. The authority of this Code was acknowledged by all the Maritime States, on those Seas, and continued in force for more than four hundred years, as may be inferred from the following words of *MARINO FRECCIA*, a writer at the close of the 16th Century — “Hinc in Regno, non *LEGE RHODIA*, Maritima decernuntur, sed *TABULA* quam *AMALFITANAM* vocant, omnes controversiæ, omnes lites, ac omnia Maris discrimina, eâ lege, eâ sanctione

<sup>y</sup> See *DU FRESNE*'s notes on *ANNA COMNENA*'s History, p. 234. edit Paris.

By permission from the Caliphs they founded the famous Hospital of St. John, at Jerusalem, whose Knights, as we have seen, became inhabitants of *RHODES*, and proved powerful protectors of that commerce, to which they were indebted for their existence. The honour of inventing the compass is also by some attributed to the people of Amalfi. *GEMELLI CARRERI*'s *Voyages*, Book. I. Chap. I. *GIANNONE Ist. di Napoli*, Lib. 7, cap. 3.

*usque*

*usque ad hæc tempora finiuntur.*<sup>2</sup>” Yet, at the time this author wrote, its influence was not so extensive as formerly. As trade increased, various other ports of the Mediterranean acquired their share of it, and, becoming powerful and opulent, were impatient of receiving laws from a neighbouring rival. Each therefore, as occasion offered, set up for its own legislator, and decided in particular cases, according to regulations of its own, still however referring to the AMALFITAN TABLE in points of public concern. The sources of maritime law, being thus multiplied, produced in process of time such confusion and contradiction in the administration of justice, that, at a general assembly, it was at last agreed to digest the separate laws of each community into one body. Accordingly, making use of the AMALFITAN TABLE as a basis, they formed a superstructure of all such regulations as appeared useful and consistent in the various Laws

<sup>2</sup> In Lib. *De Sub feudis. De Officio Admir.* Lib. 1. Num. 8. This writer, p. 327, tells us that AMALFI was a Metropolitan See, as early as the year 904.



of Marseilles,<sup>a</sup> Pisa, Genoa, Venice, Barcelona,<sup>b</sup> Aragon and the Morea, and published them about the close of the 14th century, under the name of CONSOLATO DEL MARE, a CODE which, to this day, retains most of its original authority.<sup>c</sup> Whoever is at all acquainted with the general spirit of this Code will not hesitate in pointing to the source whence it was derived. In many particular articles we may discover the exact features of it's original; and this internal evidence added to the reasons already assigned for such a conclusion, afford, I

<sup>a</sup> MARSEILLES, at this day, one of the busiest ports in Europe, was founded almost six centuries before Christ by a greek colony, and is celebrated as a place of great wealth and splendour by many ancient writers. STRABO Lib. 4. TACITUS in *Vit. Agricolaë*. CICERO *Orat. Pro Val. Flacco*. MONTESQUIEU *Esp. Des Loix Liv. 20. c. 5*.

<sup>b</sup> Some are of opinion that the Laws of BARCELONA claim the honour of being the Basis of modern mercantile jurisprudence. See ROBERTSON's *State of Europe*. p. 351.

The account I have given above, is founded upon the opinion of GIANNONE. *Ist. di Napoli*. Lib. 11. cap. 6. and of FRECCIA, Loc. cit.

<sup>c</sup> ZOUC'H's *Admiral Jurisdiction*. WELWOOD's *Abridgment of sea laws*. GIANNONE, ut supra. The best edition of the CONSOLATO DEL MARE was published at Venice in 1567.

think,

think, very presumptive proof, that some parts at least of the AMAFITAN TABLE were copied from such fragments of the Rhodian laws as are preserved in the Pandects of Justinian.<sup>d</sup>

While trade and navigation in the south were thus regulated by two Codes, the TABLE OF AMALFI and the CONSOLATO DEL MARE, the spirit of commerce had revived in another quarter of Europe, and the influence of these ancient sea laws was seen to diffuse itself on the western coasts and among the nations on the Baltic. The state of maritime justice among the inhabitants of those regions, before the 12th century, may easily be imagined. It was suited well enough perhaps to the contracted intercourse of the times, but must have been soon found inadequate to the purposes of that extensive communication which now began to be opened.

<sup>d</sup> Page. 83.



About the year 1194, king Richard I, on his return from the Holy Land, rested for some time in the Isle of OLERON in the Bay Aquitain, or, as it is now called, of Biscay, and having been convinced, perhaps during his perilous voyage, of the great inconveniences to which Merchants and Mariners in that quarter of the world were perpetually exposed for want of a maritime code, he there gave orders for a work of this kind to be compiled. Such, according to the best authorities, was the origin of the LAWS of OLERON, so justly celebrated for their wisdom and equity, and for being the model of all the sea laws in the west of Europe.\* Jealous of the lustre which our country derives from this circumstance, the French writers have not been backward in assert-

\* GODOLPHIN in an "appendix to his View of the Admiralty Jurisdiction," has given a collection of them in 47 articles. SELDEN thinks, that Richard published them, not as Duke of Aquitaine, but by his right at that time, as King of England, to superintend and direct all transactions on those seas. *Mare Clausum*. cap. 24. which perfectly agrees with the opinion of another very learned english civilian, who says of these laws, that "the western world received them from the English, by way of deference to the *Sovereignty of our Kings*  
in

ing a superior claim to this Code. It was drawn up, they say, in the french language, published in an Island on the coast of France, and intended solely for the service of that nation; since throughout the whole, no mention is made of the Thames, or any river or port in England or Ireland, but all is referred to Bourdeaux, St. Malo, and other sea ports of France.<sup>f</sup> But no argument founded on the place where it was compiled and promulgated can, I think, be adduced in favour of their opinion, when it is considered that the Isle of Oleron, with other territories in those parts of France, was then annexed to the Crown of England; consequently, these laws were as much english laws as if Richard had published them in London. This may also serve to answer the other part of their argument, for besides

*in the British Ocean, and to the judgment of our countrymen in sea affairs."* SIR LEOLINE JENKINS'S *Charge to the Cinque Ports*. p. LXXXVII.

Henry II, about 20 years before, had promulgated a law of Wreck in that island, which was adopted by his son. RYMER'S *Fædera*. Tom. 1. p. 12. 20. Hen. II. A. D. 1174.

<sup>f</sup> MIEGES'S, *Sea Laws*. p. 3.

that



that it was more natural to insert the names of places in the neighbourhood, than of such as were remote, it must be obvious that Bourdeaux and St. Malo were as much a part of the King's dominion, as any sea ports in England or Ireland. As to the language in which they are written, it is no other than what was frequently adopted by our Kings in their legal acts and ordinances, and cannot therefore be used as a reasonable proof in this particular instance. "I call them the laws of OLERON, says a great Civilian, not but that they are *peculiarly enough English*, being long since incorporated into the customs and statutes of our Admiralties; but the equity of them is so great, and the use and reason of them so general, that they are known and received all the world over by that rather than by any other name."<sup>2</sup> With respect to the latter part of this observation it must be remarked, that greater latitude is here given to those laws, than writers in general have been willing to allow them. For

<sup>2</sup> SIR LEOLINE JENKINS. loc. cit.

it has been asserted, that their influence never extended further than over the western seas of Europe, and even in these was more particularly confined to the coasts of France and Great Britain, and it is added, that their authority, in this part of the world, very much resembled that of the Rhodian Laws in the Mediterranean. “The Sea Laws instituted at Oleron, says MOLLOY, never obtained any other, or greater force than those of RHODES formerly did, that is, they were esteemed for the reason and equity found in them, and applied to the case emergent.<sup>h</sup>” Their warmest admirers, in short, have limited their authority to that Ocean which extends from the Straits of Gibraltar to the Coast of Norway. These laws are said to have received amendment and confirmation twice during the reign of Edward III, particularly by the Verdicts given in the famous Inquisition at Queensborough, in the year

<sup>h</sup> MOLLOY, *De jure maritime et navali*, Introduction. GROTIUS. *Flor. Spars. in Jus Justinian.* p. 17.



1376,<sup>i</sup> but since that time their influence has gradually become feeble and contracted; and as laws, more conformable to modern custom, have been introduced, even the subject of many articles has long ago grown entirely obsolete.<sup>k</sup> In France they seem to have been originally admitted nearly upon the same footing as in this country, and afterwards to have experienced similar revolutions. By an ancient record, entitled *Droits et Pre-eminences de l'Amiral*, this officer is enjoined in the 10th title to found his decisions on the Laws of OLERON. In some subsequent records a more extensive

<sup>i</sup> The INQUISITION at QUEENSBOROUGH was held before two Admirals, and the Lord Warden of the Cinque Ports (an Officer of high antiquity, as appears from a summons in the time of Ed. 1. see BRADY'S *Appendix*. N°. 6.) and the Verdicts there given by 18 expert seamen, appointed for the purpose of examining the maritime Code, were confirmed by the king's letters patent. SIR LEOL. JENKINS'S *Speech in behalf of the jurisdiction of the Admiralty*. vol. 1. p. LXXVII. MOLLOY. loc. cit. SELDEN, in his notes on FORTESCUE *De laud. leg. Ang.* cap. 32. considers ROUGHTON'S translation, called, *De Officio Admiralitatis*, rather, as a monument of antiquity than authority, and ascribes it, with a copy of the ROLL OF OLERON (communicated to him by SIR WALTER RALEIGH) to the time of Henry 6.

<sup>k</sup> ANDERSON'S *History of Commerce*. Vol. 1. p. 96.

scope is given him, and the Oleron Laws are often superseded by public Edicts and local Usages; most of them have been variously modified, and some parts abrogated by Royal Ordonnances<sup>1</sup>; yet they still maintain a place in their Marine Code, and hold, as with us, a limited authority in nautical controversies.<sup>m</sup>

Various are the materials of which the Maritime Law of England is at present composed. Besides the Rules of Oleron, the indisputable basis of the structure, many useful principles have been adopted from the Laws of RHODES and from the ROMAN CIVIL LAW. “Juris Civilis vel Cæsarii usus, ab antiquis seculis etiam nunc retinetur in Foro Maritimo seu Curiâ Admiralitatis.<sup>n</sup>”

<sup>1</sup> Particularly by Charles VI, Lewis XII, Francis I, and Henry III.

<sup>m</sup> Reglemens et Ordonnances sur la fait de l'Amirauté, published at Rouen in the years 1543. 1554. 1594. 1602. 1604. See also 12 articles of the MARBLE TABLE 1673, (so called, from the place where the admiralty sessions are held every week at Paris,) and the final regulations in the year 1681 Liv. 1. tit. 2. *Ordonnances de la marine*.

<sup>n</sup> SELDEN *Differt. ad Fletam*. cap. 8. and SIR J. HAYWARD'S *Life of Edward VI*, p. 29.



And surely it may be considered as a fortunate coincidence, that the works of JUSTINIAN should begin to diffuse their light over Europe at the very time when COMMERCE, by bringing together the inhabitants of distant climates, had created new situations and new interests among men, which rendered some volume of natural justice absolutely necessary.\* To the species of law just mentioned may also be added some Municipal Institutions and Customs peculiar to certain places on the sea

\* During the 12th and 13th centuries, ACADEMIES for the study of the *Roman Civil Law* were established in almost every country in Europe. That of IRNERIUS at Bologna erected A.D. 1150 seems to have been the parent of all the rest. The Schools of Montpellier, Toulouse, and Orleans, in which AZO and ACCURIUS taught, spread this science over *France*; and in the same age, VACARIUS, whom SELDEN calls a disciple of the Bolognese academy, *Dissert. ad Flet.* cap. 7. read lectures on the Civil Law at Oxford. "Tunc (speaking of this æra) leges et causidici in *Angliam* primo vocati sunt, quorum primus, magister VACARIUS hic in *Oxenfordiâ* legem docuit." DUCK, *De usu &c.* l. 2. c. 8. §. 27. from a M. S. in the Cotton Library, and he afterwards shews, that the study was much cultivated in England, especially in this University. *Ut supra* from §. 28. to 38. The same period so propitious to *Jurisprudence*, proved equally favourable to *Commerce*. The foundation of the great mercantile commonwealth of the HANSE TOWNS was laid. An immense number of cities in different parts of Europe received their

coasts; "the whole, as BLACKSTONE observes, being corrected, altered and amended by Acts of Parliament and common Usage; so that out of this composition a body of jurisprudence is extracted, which owes its authority only to its reception here *by consent of the Crown and People.*"<sup>p</sup>

The first case in our law, extant, relative to Marine Jurisdiction, occurs in the reign of Edward I, and is preserved in an old record in the Tower, which speaks of the King's sovereignty on the seas, and the jurisdiction of his deputy, the Admiral, as being, even then, *du temps dont il ny a de memoire.*<sup>q</sup>

their CHARTERS OF INDEPENDENCE. The OLERON and WISBUY LAWS were promulgated, COINAGE and MANUFACTORIES improved, and various other channels opened, through which to facilitate and extend the Communication of Mankind. ANDERSON'S *Hist. of Commerce*. vol. 1. B. 3.

<sup>p</sup> COMMENTARIES. B. 3. chap. 7. §. 3. see more particularly Stat. 28. Hen. VIII. 5. Eliz. c. 5. 13. Car. II. 9. 2. W. and M. 2. 22 and 31. Geo. II. in the two last of which, the laws for regulating his Majesty's Navies and Forces by Sea were collected and formed into one code.

N. B. DUCK thinks, that many parts of our maritime law are copied from the *Consolato del Mare*. De usu &c. l. 2. c. 8. §. 25.

<sup>q</sup> SELDEN'S NOTES ON FORTESCUE cap. 32. 1 Inst. 439. 4 Inst. *Jurisdiction of Courts*. c. 22.

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But whatever may have been the nature or the antiquity of this officer's power, it is generally agreed that the *Court of Admiralty*, in which he presides, was not formed into a regular establishment till the time of Edward III, when that authority, which had before been very irregularly exercised, became more permanent and defined.<sup>r</sup> To discountenance

<sup>r</sup> SELDEN Loc. cit.

Though there be no doubt that the Office of ADMIRAL is of very high antiquity, there appears no express mention of it before the close of the 13th century 25 Ed. I. nor in our printed law does it occur till, 8. Ed. II. RYMER's *Fæd.* tom. 1. p. 176. SELDEN, ut sup. In the beginning of the following century, we meet with two or more Admirals at the same time, who are described as holding jurisdiction over the North and South seas, distinguished by the Mouth of the Thames. But in 10. Rich. II. the office of SOLE ADMIRAL of England was conferred for the first time by the king's letters patent on Rich. Fitzallen jun. EARL of Arundel and Surry. SPELMAN's *Glossary.* voc. Admiral. FÆDERA. tom. 2. p. 162. 4. Inst. 75. HALE. C.L. 36. Since then it has been considered of high dignity, and its authority variously modified and limited, particularly by Stat. 28. Hen. VIII. and 5. Eliz. c. 5. It is at present exercised by persons styled, Lords Commissioners for executing the Office of Lord High Admiral of Great Britain and Ireland. Stat. 2. W. and M. c. 2. and Stat. 22. Geo. II. c. 3. which adds, that no sentence shall be valid unless the major part of the Commissioners present be of the Privy Council.

In *France*, the Admiral is always a Prince or a person of high birth and quality. He sits in the King's House, and there holds

the opinion of those, who, not distinguishing between the *Office* itself and the *Place* where it was exercised, have carried this institution into a much more remote period, it may be sufficient to refer to BRITTON, who, in the Introduction to his Book on the *Ancient Pleas of the Crown* Temp. Ed. I. will be found not to have enumerated the *Admiralty* among

holds his court, which used to be the case with the Admirals of England. This Court is composed of a Lieutenant General, who presides, a Particular Lieutenant, three Counsellors, the King's Advocate and Solicitor, a Chief Register, and two Serjeants, all appointed by the Admiral, but holding their commissions of the King.

The Admiralty of HOLLAND is divided into the five Colleges of Amsterdam, Rotterdam, Hoorn, Middleburgh, and Harlingen. That of Amsterdam is composed of 12 Lords, or Counsellors. Of these, one is deputed by the Nobility of Holland; the Cities of Amsterdam, Leyden, Haarlem, Gouda, and Eindhoven depute one each, and the other six are chosen by the six other Provinces. The rest of the Colleges are nearly upon the same principle. Each of them has its particular Officers, namely, an Advocate Fiscal, a Receiver General, a Commissary, an Overseer of the sailors, a Commissioner of sales, a Treasurer, who is Paymaster, a Grand Provost, with Secretaries and Officers for the inspection of passports, and the receipt of duties.

N. B. They may pass final sentence in all civil matters under 600 florins, but, above this sum, an appeal lies from their sentence to the Assembly of the States General. POSTLETHWAYTE, *Dict. of Trade and Commerce*. vol. 1. p. 21.

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the Courts of justice at that time. This omission LAMBARD accounts for, by saying that the Office, afterwards delegated to the Admiral, was then in the King himself, and was exercised by him, or by some lawyers who attended him; and he is inclined to place the origin of the *Admiral's Court* in the days of Edward III, both on account of his reign being remarkable for its naval and mercantile operations, and because by a statute 2 Rich. II. which regulates the proceedings of that Court, the King establishes it upon the same footing as in his Grandfather's time, as if he meant by these words to reduce it to its *original* authority.\* In what this authority consisted, it is not difficult to form a general idea, though some particular articles of jurisdiction have been very warmly disputed.† It seems to have had the exercise both of *criminal* and *civil* justice over all maritime persons, and in all causes properly ma-

\* Archeion. p. 48.

† SIR ED. COKE'S *Jurisdiction of Courts*, 4. Inst. c. 22 and 23. ZOUCH'S *Jurisdiction of the Admiralty asserted*. GODOLPHIN'S *View of the Admiralty Jurisdiction*.

ritime." This it continued to hold till 28 Hen. VIII. when it appearing inconsistent with the genius of the English Constitution to admit of proceedings in criminal suits without a Jury, a Statute was passed which enacted, that for the future all cases of Marine Felonies should be tried before Commissioners nominated by the Lord Chancellor, according to the laws of England.<sup>w</sup> Among these Commissioners, two common law Judges are constantly appointed, who, as BLACKSTONE observes, in effect try all the prisoners, and "this he adds, is now the only method of trying marine felonies in the Court of Admiralty; the Judge of the Admiralty still presiding therein, as the L<sup>d</sup> Mayor is the president of the sessions of *Oyer and Terminer* in London."<sup>x</sup> It is not to my present purpose to enter particularly into

<sup>u</sup> SIR LEOLINE JENKINS'S *Speech in behalf of the Admiralty Jurisdiction*. vol. 1. p. LXXVII.

<sup>w</sup> It had been attempted in 8. Hen. VI, but the Royal assent not being obtained, it miscarried

N. B. The jurisdiction of the *Cinque Ports* was not included in this statute, for this was always considered as distinct from, and independent of the Lord High Admiral's Court. SIR L. JENKINS. *ut supra*.

<sup>x</sup> Commentaries. B. 4. c. 19.



the civil practice of this court, the extent of its authority, or the forms of its proceedings. Perhaps I may be thought to have carried my reader already too far from the main object of the enquiry, I shall only add therefore, how in all contests respecting this court, it should be remembered, that although the proper region of its jurisdiction is said to be *Super Altum mare*, it is not the *Place* only, but *the Nature of the Case*, happening within such a place, that creates the jurisdiction; and therefore if a Contract of Marriage or a Testament be made at Sea, or if a Lease or any Obligation be *sealed* there, the *common law* shall have cognizance of it, and not the *Admiralty*, because *the case, though on the High Sea, is not properly maritime*. And so on the contrary, in a case of which the admiralty hath *original* jurisdiction, though circumstances afterwards arise properly the objects of *common law*, yet shall the *maritime law* prevail: thus in the case of *Sandys*, and the *East-India Company*, it was the opinion, that if it were an *admiralty cause*, the matter being transacted

*infra*

*infra corpus comitat'* was not material, for that a person might be taken up by execution out of the admiralty, upon sentence there, in any county of England.<sup>y</sup>

If from the West, and from the Coasts of the Mediterranean, we turn our attention to the northern parts of Europe, we shall there discover an industrious, and active people, adopting similar schemes of legislation on the shores of the Baltic. The same causes, no doubt, which gave rise to the laws we have already described, operated also in the production of that body of marine law, known by the title of the WISBUY CODE, from an opulent city of that name in the isle of Gothland, where it was promulged. It is hardly possible to settle the exact age of this compilation. Different writers, as guided by their

<sup>y</sup> Skinner's Rep. Term. Hill. 35. Car. II. 9. 13. Rep. 53. 1. Sid. 158. 1. Salk. 35. ZOUCH ut sup. Assert. 3. For the Practice of the Admiralty Court, consult an excellent little work CLARKE'S *Praxis Curiae Admiralitatis*, the 8vo edit. of 1743. with notes; and for valuable political information on the subject of maritime law, WYNNE'S edition of SIR L. JENKINS'S works, his Life in vol. 1. and the letters at the end of vol. 2.



particular prejudices, have ascribed it either to a very late, or a very early period. According to some, the inhabitants of Gothland carried on an active trade, and were, on other accounts, a respectable people, as far back as the 9th century, and from this circumstance they infer that these laws must be of very high antiquity, and were the model by which those of OLERON were framed. Others, with the best authority on their side, bring forward the bright age of this island, and the foundation of its capital city, to the middle of the 12th century, and retort, in favour of the Oleron laws, a strong charge of imitation on the compilers of the nothern code.<sup>z</sup> But which ever has the best claim to originality,

<sup>z</sup> LAMBECH. *Origines Hamburgenses*. page 12. CLEIRAC *Us' et Coustumes de la mer*. See also *Fasciculus de Jure nautico*. p. 682. and OLAUS MAGNUS. *Hist. Lib. 10. cap. 16*. WELWOOD's assertion that "the Laws of Oleron were afterwards translated into Dutch by the people of Wisbuy, to serve them in their traffic on the coast of Holland" is to be understood, not of the code here in question, but of some particular laws which they found it necessary to adopt, to regulate their intercourse with this newly-erected nation of Traders. *Abridgment of Sea Laws*. p. 13.

it is certain that these two codes bear a very striking resemblance to each other, not only in the general spirit, but even in the very letter of some particular laws, a circumstance which may perhaps be accounted for, without fixing the imputation of plagiarism on either, by referring them both to one common source, the Laws of RHODES. The probability of such a conclusion, strengthened with much internal evidence, will appear by reflecting upon the great communication that was opened, in the 12th century, between the Baltic and the Mediterranean Coasts, when the inhabitants of the South began to exchange the luxurious produce of their climate, for the coarser, but equally useful commodities of the North.<sup>a</sup> It was not possible for an intercourse, where so many different claims, and such opposite interests were concerned, long to subsist without having recourse to some standard of jus-

<sup>a</sup> Spain, Italy, and the Levant, furnished the northern Traders with Spices, Drugs, Fruits, Wine, Cotton &c. from whom they in return obtained, among other necessary articles, Iron, Copper, Flax, Hemp, and Timber.



tice, by which commercial and nautical controversies might be adjusted. The salutary effects of those Sea Laws, already mentioned as prevailing in the south, must have strongly recommended them to the notice of a rising Nation of Mariners, destitute (as it is natural to suppose they were) of civil, or commercial maxims, and that spirit of universal equity, by which they are characterized, rendered them alike applicable to naval suits in the Gulph of Venice, or of Finland. The commendation which GROTIUS has bestowed on the Laws of WISBUY implies a degree of excellence in them not often found in the polity of rude nations, and conforms exactly with what has constantly been applied to the RHODIAN Laws. “*Quæ de maritimis negotiis Insulæ Gothlandiæ Habitatoribus placuerunt, tantum in se habent, tum æquitatis, tum prudentiæ, ut omnes oceani accolæ eo, non tanquam proprio, sed velut gentium Jure, utantur.*”<sup>b</sup> Their authority is also described by

<sup>b</sup> Prolegomena ad Procopium. p. 64.

a northern Historian in the following words.

“In omni navigantium controversiâ, præsertim a CONSULATU WISBYCENSI petitur et datur jus et sententia definitiva, quid unicuique permittendum vel auferendum erit.” And the

extent of their influence is afterwards thus clearly defined by the same writer. “Leges

maritimæ et decisiones omnium controversiarum singulariter longe lateque usque ad *Columnas Herculis et ultimum mare Scythicum*, exeâ

(i. e. Lege Wisbycensi) petuntur, et datæ observantur.”<sup>c</sup> It is greatly to the honour of

these ancient laws, that having for many ages enjoyed unrivalled authority in all the maritime tribunals of the north, they were thought worthy of being adopted by the legislators of

<sup>c</sup> OLAUS MAGNUS Hist. lib. 2. cap. 24. and lib. 10. cap. 16. It is not improbable, that since, by this account, the laws of OLERON and WISBUY must have been indifferently used in many places, the dispute of originality might have proceeded from the inaccuracy of quoting them in those ignorant ages.

WISBUY, was in the 12th century a place of extraordinary splendour, and the many noble specimens of art, found there even at this day, may serve to justify the description given by CLAUS.



the HANSEATIC LEAGUE, and acknowledged as the basis of their compilation.<sup>d</sup> REIN-

<sup>d</sup> The Society of the HANSE TOWNS began to be formed about the beginning of the 13th century, for the protection of the Baltic Trade, and for more than 300 years was considered as a most formidable maritime association. The nature, and extent of its original institution, are not easily ascertained. It seems to have consisted only of a few considerable towns, situated on the Baltic Sea, at the head of which were the cities of Lubec and Hamburg. Mutual interest was at first the only bond of their connection: a Code of Laws, and a regular form of Government was afterwards established, Magistrates, and other Officers, with their respective Tribunals appointed, a public Treasury erected, Fleets and Armies levied, and the union of the whole Confederacy cemented by the strongest political obligations. In the 14th century, which may be considered as the æra of its glory, the HANSEATIC LEAGUE comprized 64 cities, which had as many more in alliance with them. It was divided into four separate districts. 1st The VANDALIC, over which (and indeed over the whole) LUBEC presided. In this district were contained all the German cities along the Baltic coast, from the Elbe, to the Oder. The 2nd district of the RHINE, at the head of which was COLOGNE, comprized the countries of Cleves, Overysfel, Gueldre, and the Circle of Westphalia. BRUNSWIC formed the 3d district and had under it most of the principal cities of Upper and Lower Saxony. The last district was that of PRUSSIA headed by the city of DANTZIG, and containing most of the towns from the Vistula to the gulph of Finland. Thus was this powerful Confederacy, besides a very extensive inland territory possessed of a sea coast of more than twelve hundred miles in Germany only, and had in alliance many large cities in England, France and Italy. In consequence of these advantages, it for many years

OLD KURICKE, a learned Commentator on this work, informs us that before the close of the years almost monopolized the trade of the North, and, by preserving its alliances unshaken, bore a considerable part in the politics of Europe. Secure of effectual protection, the Hanseatic States claimed exclusive privileges in trade to the detriment of others; they arrested the ships of different nations upon the most frivolous pretences; imprisoned the merchants, and refused to release them without exorbitant ransoms: But as their prosperity had naturally awakened the jealousy of their neighbours, their arrogance contributed to inflame it, and in the end raised up against them a combination which gradually effected their ruin. The dissolution of the Confederacy however turned greatly to the advantage of some of its parts. The cities of HAMBURGH and LUBEC, in particular, gained in opulence what they had lost in power. Finding themselves no longer at the head of an ambitious League, which had enabled them to exercise a kind of commercial despotism over their neighbours, they adopted milder maxims of trade, and contenting themselves with a peaceful interchange of commodities, preserved their liberties and political consequence. DAVENANT has drawn a very splendid picture of the state of HAMBURGH at the close of the last century, and ranks her as the third commercial city in Europe, LONDON and AMSTERDAM being, as he says, the only ports that could claim pre-eminence. See his *Discourses on the Public Revenue and Trade of England*, Part II. An accurate account of the HANSEATICS would make an interesting part of the *Commercial History*, formerly mentioned as a great desideratum. The writers who treat expressly of them are, ANGELIUS A WERDENHAGEN, in a latin work, *De Rebus-publicis Hanseaticis*, 3 vol. 12°. and KNIPSCHILDUS, *Tractatus Hist-politico-juridicus, de Juribus Civitatum Imperialium*. Lib. i. cap. 4.

Many important facts also may be gathered from LAMBE-  
CIUS



16th century, notwithstanding their extensive commerce, the Hanse Towns had never published any code of maritime law, but were entirely governed by those of *Wisbuy* and *Oleron*. At a general meeting at Lubec, in the year 1614, it was agreed to extract from them whatever should be thought most useful, to adopt such of the Rhodian Laws as were extant, and, with the addition of certain local usages, to form the whole into a systematic arrangement under 15 titles, which should comprize a penalty for every offence, and an equitable rule of decision for every dispute incident to the Baltic Trader.\*

*cius Origines Hamburgenses*, from the northern historians, from GUICCIARDINI's *History of the Low Countries*, where their principal Comptoir was established, and from ANDERSON'S *History of Commerce*.

\* What has been advanced of the strong resemblance between the OLERON, WISBUY and HANSEATIC Codes, will be confirmed by referring to the following Articles in each, which contain indisputable proofs of imitation.

OLERON.	WISBUY.	HANSE.
Art. 1, 2 - - - -	Art. 13, 14, 15 - - -	Tit. 2
7 - - - - -	19 - - - - -	14--Art. 2.
8, 9, 10 - - - - -	12. 20, 21. 38 - -	8, 9, 10,
14 - - - - -	26. 50. 67. 70 - - - - -	
18 - - - - -	31 - - - - -	
19 - - - - -	32 - - - - -	4--Art. 21
		Besides

Having thus briefly pointed out the Origin and Nature of those several Maritime Codes, in which any traces of the RHODIAN LAWS can be discovered, I shall only further observe, it is no small proof of their superior excellence, that being transplanted out of their native soil, in GREECE, they have flourished in very opposite climates and situations, and that though conveyed, as we have seen, in a mutilated condition, from one extremity of Europe to the other, yet amidst all the revolutions in Government and Trade, their authority has been confirmed, and their equity acknowledged in every country which has at any time been the Seat of naval, or commercial Empire.

Besides these more striking instances, others might be selected which have a slighter, though a sufficient resemblance, to justify the supposition, that they were copied from each other; though upon the same principle, as we have shewn, they may all three be referred back to the CONSOLATO DEL MARE, and from thence to the one general source of Maritime Justice, THE ANCIENT LAWS OF RHODES. Compare, in particular, Titles 8 and 9, *Jur. Hanseatic*, edit. KURICKE, with the *Rhodian Law*, DE JACTU.

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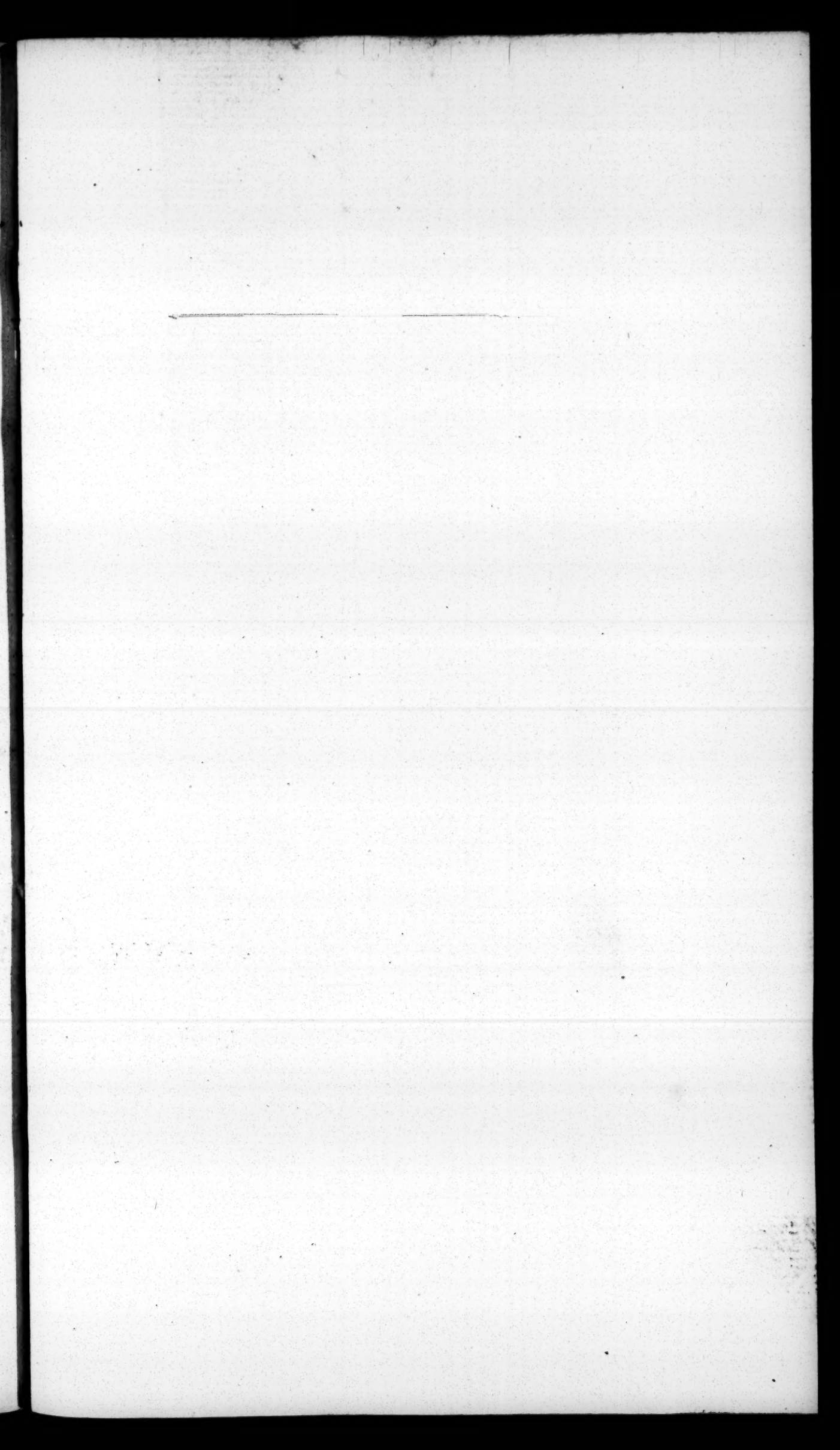
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## E R R A T A.

p. 50. l. 12. for BINNIUS read VINNIUS  
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884. K. H.  
T. 2

